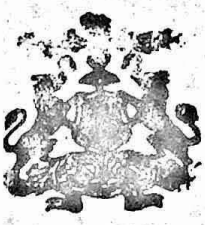
1949

117

HINDU LAW REFORM COMMITTEE

REPORT OF THE COMMITTEE APPOINTED BY THE GOVERNMENT OF H. H. THE MAHARAJA OF MYSORE



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1949

BANGALORE,

Dated, 6th May 1949.

Rajadharmaprasakta
S. VENKATARANGA IYENGAR, B.A., LL.M.,
Chairman,
Hindu Law Reform Committee.

H.L. 433—48-49.

To

The Legal Remembrancer and
Secretary to Government,
Law Department, Bangalore.

Dear Sir,

I have the honour to submit herewith the Report of the Hindu Law Reform Committee appointed by Government under their Order No. P. 298-311—Cts. 81-44-4, dated 11th July 1945.

It will be seen that the Report is unanimous and there is no dissenting minute.

Yours faithfully,
S. VENKATARANGA IYENGAR,
Chairman,
Hindu Law Reform Committee.

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60	5	and has placed ...	and have placed
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109	37	*Santhakumar* ...	*Sanathkumar*
111	16	a heir ...	an heir

REPORT OF THE HINDU LAW REFORM COMMITTEE, BANGALORE.

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PRELIMINARY.

Appointment and personnel of the Committee.—This Committee was constituted by an order of Government No. P. 298-311—Cts. 81-44-4, dated the 11th July 1945, with a view to implement the promise made by the Government on the floor of the Legislative Council in December 1944. In his speech on a resolution moved in the Legislative Council in the following terms:—

> "That this Council recommends to the Government of His Highness the Maharaja that a Committee be appointed for revising the Hindu Law Women's Rights Act X of 1933 and other enactments bearing on the Hindu Law"

the then Minister for Law observed, "However, seeing that there is a very strong feeling that there are very many anomalies in the working of this Act, and it is in the interest of all people concerned that the law should be rendered as unambiguous as possible, I am prepared to accept, on behalf of the Government, the suggestion of Honourable Members to appoint a Committee so that they may go into the question fully and make their suggestions on the various ways in which the Act should be improved" (The Mysore Legislative Council Debates, Vol. XLIX, pages 409-415). The order of Government constituting the Committee states that the High Court, which was consulted in the matter, was of the opinion that the appointment of such a Committee was urgently called for to revise the Act in the light of the decisions given by the High Court as well as to bring the law in consonance with the spirit of modern times. The Government agreed that there was need for the appointment of such a Committee and the present Committee was therefore appointed consisting of—

1. *Rajadharmaprasakta* Mr. Justice S. Venkataranga Iyengar, B.A., LL.M., (Chairman).
2. *Rajadharmapravina Diwan Bahadur* Mr. P. Mahadevayya, B.A., B.L., (Retd. Chief Justice).
3. *Rajadharmaprasakta* Mr. C. Subrahmanya Aiyar, B.A., B.L., (Retd. Judge, High Court of Mysore).
4. Mr. M. P. Somasekhara Rau, B.A., LL.B., Advocate, Bangalore.

5. Mr. Justice N. Balakrishnaiya, B.A., LL.B.
6. Mr. Justice R. Venkataramaiya, M.A., LL.B.
7. Mr. H. Lingappa, B.A., LL.B., Advocate, Shimoga.
8. Mr. D. S. Mallappa, M.L.C., Merchant, Tiptur.
9. Mrs. Yesodhara Dasappa.
10. Mr. Hombe Gowda, B.Sc., LL.B., Public Service Commissioner.

Mr. G. S. Venkataramana Iyer, B.Sc., M.L., Assistant Secretary to Government, Legislation Branch, was appointed Secretary to the Committee in addition to his own duties. A copy of the order constituting the Committee is printed as Appendix I of the Report. The Secretary was appointed as full time Secretary of the Committee for a period of seven weeks from 27th February 1947, and again for a period of four weeks from the 25th August 1947. For the rest of the time he attended to the work of the Committee in addition to his own duties.

Terms of Reference.—The terms of reference to the Committee as set out in the Government Order constituting it were, "to suggest suitable amendments to the various provisions of the Hindu Law Women's Rights Act, 1933, so as to resolve the difficulties felt in the interpretation of the existing provisions of the Act and to be in consonance with the spirit of modern times".

Sittings of the Committee.—The Committe held twelve sittings in all at Bangalore on the following dates:—29th September 1945, 23rd February 1946, 25th May 1946, 15th June 1946, 21st August 1948, 4th September 1948, 11th September 1948, 12th September 1948, 26th September 1948, 12th March 1949, 19th March 1949 and 29th April 1949.

Scope of work.—At the first meeting of the Committee, the terms of reference of the Committee as set out in the order constituting the Committee were discussed and the scope of the work of the Committee settled. In the light of the express terms of this order of Government, the Committee was of the opinion that its functions were limited to a consideration only of those provisions of Hindu Law which have been embodied in the Hindu Law Women's Rights Act, 1933. The Committee had thus to examine these provisions and suggest suitable amendments thereto which would resolve the difficulties felt in their interpretation. It had also to suggest amendments to the provisions of law embodied in the Act which would be in consonance with the spirit of modern times. The Committee did not therefore feel called upon to examine

the existing state of Hindu Law in regard to matters not embodied in the Act or to suggest amendments thereto.

Questionnaire.—At this first meeting, the Committee also decided to issue a Questionnaire to the public inviting opinion on the changes in the Act which were called for. The questions to be included therein and a memorandum to accompany the Questionnaire setting out the need or the reason for the changes suggested in the several questions included in it were settled. The Questionnaire and the memorandum are printed as Appendix II of the Report.

The Questionnaire was issued in November 1945 in English and Kannada. It was published in the *Mysore Gazette* in English as well as in Kannada. It was also included in the Mysore Information Bulletin and local newspapers kindly gave it notice. Copies were sent to Judges, Advocates, Government officers, Law and Ladies' Associations, Mutts and other religious institutions, members of the Representative Assembly and the Legislative Council, Presidents and Vice-Presidents of District Boards and non-official gentlemen and ladies of position and influence. Copies were also sent to some gentlemen outside the State.

Eighty-six replies were received in all. A list of persons and institutions from whom replies were received has been printed as Appendix III of the Report. The replies themselves have been separately printed.

Making allowance for the technical nature of the subject, it has to be stated that the response cannot be considered as satisfactory. It has been, however, fairly representative of various shades of opinion. It is also gratifying to note that the replies received disclose very progressive views and are generally in favour of reform on the lines indicated in the Questionnaire.

The need to supplement the replies received from the public in response to the Questionnaire, by, the oral examination of a few persons conversant with the subject and capable of expressing representative opinion was also considered by the Committee. It was, however, felt that the limited scope of the terms of reference and the fact that most of the changes called for in the year 1933 Act were of a drafting nature did not warrant such a procedure and the trouble and expense involved in the examination of witnesses were not justified in the circumstances. The Committee therefore decided against it and considered

that the replies received to the Questionnaire were a fair index of the trend of popular opinion which could be acted upon with safety.

Frame of the Report.—In its deliberations, the Committee has always kept the Hindu Law Women's Rights Act, 1933, in view, and in the Questionnaire issued as well as in the discussions at the sittings of the Committee the framework of the Act has been adopted as the basis. The frame of the Report also follows this plan and the Report is divided into chapters which correspond with the several parts of the Act, in addition to an Introductory Chapter and a final one which contains the text of an amending Bill which the Committee has prepared to implement its recommendations. As can be seen from the subjects treated in the several chapters, such a division is not an artificial one but corresponds to the several topics into which Hindu Law naturally falls and corresponds also to the several heads under which the subject has been treated in all text books and commentaries.

Acknowledgments.—The Committee wishes to express its thanks to all those who have sent replies to the Questionnaire and thus helped it with their valuable opinions. The Committee also desires to record its appreciation of the services rendered by the establishment consisting of a part-time steno-typist of the High Court and a part-time Secretariat official who were for some time appointed to attend exclusively to the work of the Committee.

The Committee wishes to make special mention of the fact that Sri G. S. Venkataramana Iyer, B.SC., M.L., Secretary to the Committee, with his sound knowledge of law, his experience as an officer of the Secretariat in the Legislation Department, natural aptitude for handling anything that may be entrusted to him with care and thoroughness and his keen interest and commendable zeal for work, was of great assistance to the Committee.

The Committee also desires to make special mention of the highly satisfactory and praiseworthy manner in which Sri K. S. Rangiah, Stenographer, discharged the onerous duties entrusted to him.

The Committee wishes to acknowledge the valuable help rendered by the Superintendent, Government Printing, in promptly executing all the work sent to the Press for printing.

———

CHAPTER I.

INTRODUCTORY.

It is provided in section 17 of the Mysore Civil Courts Act, 1883, that where in any suit or proceeding it is necessary for any court under that Act to decide any question regarding succession, inheritance, marriage or caste or any religious usage or institution, the Hindu Law in cases where the parties are Hindus or any custom (if such there be) having the force of law and governing the parties or property concerned, shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished, and in cases where no specific rule exists, the court shall act according to justice, equity and good conscience. This legislative provision proceeds on the assumption that there is such a thing as Hindu Law. An English writer cynically asked at one time—"Has such a thing as Hindu Law at any time existed in the world? Or is it that Hindu Law is a mere phantom of the brain imagined by Sanskritists without law and lawyers without Sanskrit?" (*Vide* "A view of the Hindu Law as administered by the High Court of Judicature at Madras" by Nelson, page 2). A similar view was implied in the following observation of Sir Henry Maine in his Ancient Law:—

> "The Hindu Code, called the Laws of Manu which is certainly a Brahmin compilation, undoubtedly enshrines many genuine observances of the Hindu race, but the opinion of the best contemporary orientalists is that it does not, as a whole, represent a set of rules ever actually administered in Hindustan. It is in great part an ideal picture of that which, in the view of the Brahmins, ought to be the law."

The question has been critically examined by eminent scholars such as Jogendranath Bhattacharya, Pandit Rajkumar Sarvadhikari and others and the answer is—

> "Hindu Law does exist and has existed for upwards at least of 3000 years and has governed the Hindu community in the same sense in which the statutes of the British Parliament govern the subjects of Great Britain."

Sarvadhikari, in his Tagore Law Lectures, 1880, has observed with regard to this question:—

> "If we remember then that Hindu Law was originally promulgated by the 'spiritual brother-hoods' adopted by political associations and administered by real live sovereigns, it would be great foolhardiness to maintain that Hindu Law was 'a phantom of the brain' and ought to be relegated to the regions of limbo—'A limbo large and broad since called the paradise of fools'."

Orthodox Hindus regarded their laws, religious and civil, as of divine origin. According to them—"God produced the transcendent body of law; since law is the King of Kings, far more powerful and rigid than they, nothing can be mightier than law by whose aid, as by that of the highest monarch, even the weak may prevail over the strong". That idea is well brought out in Brihadaranyakopanishad I, iv, 14 which runs as follows,

> "ತಚ್ಛ್ರೇಯೋರೂಪಮತ್ಯಸೃಜತ ಧರ್ಮಂ ತದೇತತ್ ಕ್ಷತ್ರಸ್ಯ ಕ್ಷತ್ರಂ ಯದ್ಧರ್ಮಸ್ತಸ್ಮಾದ್ಧರ್ಮಾತ್ಪರಂ ನಾಸ್ತ್ಯಥೋ ಅಬಲೀಯಾನ್ ಬಲೀಯಾಗುಂ ಸಮಾಶಗುಂಸತೇ ಧರ್ಮೇಣ ಯಥಾ ರಾಜ್ಞೈವಂ ಯೋ ವೈ ಸಧರ್ಮಃ ಸತ್ಯಂವೈ ತತ್ತಸ್ಮಾತ್ ಸತ್ಯಂವದಂತಮಾಹುರ್ಧರ್ಮಂ ವದತೀತಿ ಧರ್ಮಂವಾ ವದಂತಗುಂ ಸತ್ಯಂ ವದತೀತ್ಯೇತದ್ಧ್ಯೇವೈತದುಭಯಂ ಭವತಿ ॥"

In the preface to the First Edition of the celebrated book "A Treatise on Hindu Law and Usage" Mayne observed that "Hindu Law has the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude".

This perennial vitality of Hindu Law which is a characteristic feature is due to the fact that Hindu Law has throughout the ages shown an amazing adaptability to existing conditions of society. Indeed, it is not surprising when one examines the sources of Hindu Law. Manu says—

> "ವೇದಃ ಸ್ಮೃತಿಃ ಸದಾಚಾರಃ ಸ್ವಸ್ಯ ಚ ಪ್ರಿಯಮಾತ್ಮನಃ ।
> ಏತಚ್ಚತುರ್ವಿಧಂ ಪ್ರಾಹುಃ ಸಾಕ್ಷಾದ್ಧರ್ಮಸ್ಯ ಲಕ್ಷಣಮ್ ॥"
>
> Manu II, 12.

"तच्छ्रेयोरूपमत्यसृजत धर्मं तदेतत् क्षत्रस्य क्षत्रं यद्धर्मस्तस्माद्धर्मात्परं नास्त्यथो अबलीयान् बलीयाꣳसमाशꣳसते धर्मेण यथा राज्ञैवं यो वै स धर्मः सत्यं वै तत्तस्मात् सत्यं वदन्तमाहुर्धर्मं वदतीति धर्मं वा वदन्तꣳ सत्यं वदतीत्येतद्धैवैतदुभयं भवति"॥

[Brihadaranyakopanishad, I, iv, 14]

वेदः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः ।
एतच्चतुर्विधं प्राहुः साक्षाद्धर्मस्य लक्षणम् ॥

[Manu, II, 12]

"The Veda, the Smriti, (the sacred tradition) the customs of virtuous men, and one's own pleasure, they declare to be visibly the four fold means of defining the sacred law."

Yajnavalkya also says—

"ಶ್ರುತಿಃ ಸ್ಮೃತಿಃ ಸದಾಚಾರಃ ಸ್ವಸ್ಯ ಚ ಪ್ರಿಯಮಾತ್ಮನಃ।
ಸಮ್ಯಕ್ಸಂಕಲ್ಪಜಃ ಕಾಮೋ ಧರ್ಮಮೂಲಮಿದಂ ಸ್ಮೃತಮ್ ॥

(Yajnavalkya I, 7).

"The source of Dharma is described to be—
(1) The Vedas,
(2) The Smriti,
(3) The practice of good men,
(4) What is acceptable to one's own soul,
and (5) The desire produced by a virtuous resolve."

Though the Sruti or Vedas are regarded to be the ultimate source of law yet for practical purposes they are of very little legal value, as there are no continuous treatises on law in the Vedic works and there are only a few hymns in the Rigveda relating to inheritance. Professor Goldstucker in his Literary Remains I, 271, while depicting the state of society in the Vedic period observes, :—

"There is also a curious hymn from which it would appear that even the complicated law of inheritance which is one of the peculiarities of the existing Hindu Law, was, to some extent, already in use at one of the periods of the Rigveda hymns."

Dr. Wilson made a similar observation when he stated—

"There are some curious passages in the vedic hymns relating to the laws of inheritance and of simple contract. They may not be precise or altogether intelligible, yet they are sufficiently so to show that legislative enactments were in existence, and that, with respect to these two subjects, the law was essentially the same as that which is laid down in the reputed writings of ancient legislators, and to a certain extent is still in force." (Wilson's Pref. Vol. III, Rigveda).

With reference to this passage Sarvadhikari says—

"We demur to this. If crude legislative enactments were in existence, we have no means of knowing what these were. There are no continuous treatises on law in the vedic writings. Legal maxims are only incidentally noticed by way of comparison or illustration. These notices are so brief and so obscure, that it is difficult to make out from them the real state of law during the vedic period. But brief and obscure as they are, they afford us a glimpse of the social condition of India at that remote age, and we can distinctly perceive the germs out of which Hindu Law has been developed."

श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः।
सम्यक्सङ्कल्पजः कामो धर्ममूलमिदं स्मृतम् ॥

[Yajnavalkya, I, 7]

It is not a matter for any surprise at all that there are no special chapters in the Vedas dealing with law, because society in the Vedic times was composed of patriarchal families and disputes, which arose between individual members of the family were settled by the patriarch of the family, the head of the house known as Grihapathi, and uniformity in the decisions of the Grihapathi was never aimed at or expected. In the Vedic period, "the family was the unit of society and its independent and corporate existence was an object of the highest ambition with the patriarch of each family." (*Vide* Sarvadhikari's Principles of Hindu Law of Inheritance, II Edition, page 168).

Even Apastamba says—

> "It is difficult to learn the sacred law from the letter of the Vedas only but by following the indications given in the Veda it is easily accomplished."

Smritis ought to be regarded for practical purposes as the basis of Hindu Jurisprudence. Though according to the orthodox Hindu opinion Srutis were the *ipsissima verba* of the Divine Revelation, the authors of the Smritis were ordinary mortals and the fiction is that they knew the Vedas better than any man of those degenerate days and thus the Smritis acquired the authority of the Vedas in the estimation of orthodox Hindus. They deal with a variety of subjects including canons of law though they contain a mixture of law, religion and morality. The distinction between the three was never lost sight of. Achara and Prayaschitta were never mistaken for or confused with Vyavahara or positive law. Whatever may have been the speculations among scholars some years ago, it is quite evident to-day that the Vyavahara in the Smriti, with which we are now immediately concerned, neither represents a set of rules imposed on the people by sages nor can it be dismissed as a merely ideal picture of what, in the view of the writers, ought to be the law. The Smritis represent and are based on the actual usages that existed at the time they were composed. That it is so is supported by the following passage in Vira Mitrodaya. Mitra Misra, the author of that work, says:—

"ಪ್ರಾಯೇಣ ವ್ಯವಹಾರಸ್ಮೃತೀನಾಂ ಲೋಕಸಿದ್ಧಾರ್ಥಾನುವಾದಕತ್ವಮಿತಿ ಸಕಲನಿಬಂಧ್ಭಿರಭಿಧಾನಾತ್॥"

---

(1) प्रायेण व्यवहारस्मृतीनां लोकसिद्धार्थानुवादकत्वमिति सकल-निबन्धृभिरभिधानात् ॥

[Mitra Misra]

"For all treatise-writers consider smritis on vyavahara (civil-law) as simply reciting customs recognised by the people".

Vijnanesvara, the author of Mitakshara, while commenting on verses 118 and 119 in Chapter II of Yajnavalkya Smriti, makes a similar observation—

"ಲೋಕಸಿದ್ಧಸ್ಯಾನುವಾದಕಾನ್ಯೇವಪ್ರಾಯೇಣಾಸ್ಮಿನ್ಪ್ರಕರಣೇ
ವಚನಾನಿ ॥"

"The texts in this section are mostly recitals of what actually prevails in the world".

The Smritis were by no means intended to be exhaustive as can be seen from the fact that they themselves provided for the recognition of usages to supplement and, sometimes, even override what was contained in them. Manu, in Chapter VIII, Verse 41, says—

"ಜಾತಿಜಾನಪದಾನ್ ಧರ್ಮಾನ್ ಶ್ರೇಣೀಧರ್ಮಾಂಶ್ಚ ಧರ್ಮವಿತ್ ।
ಸಮೀಕ್ಷ್ಯ ಕುಲಧರ್ಮಾಂಶ್ಚ ಸ್ವಧರ್ಮಂ ಪ್ರತಿಪಾದಯೇತ್ ॥"

"A king who knows the sacred law, must enquire into the law of castes (jati), of districts, of guilds and of families and thus settle the peculiar laws of each".

Vide also Verse 40 in Chapter I of Narada Smriti which is as follows—

"ಧರ್ಮಶಾಸ್ತ್ರವಿರೋಧೇತು ಯುಕ್ತಿಯುಕ್ತೋವಿಧಿಃ ಸ್ಮೃತಃ ।
ವ್ಯವಹಾರೋ ಹಿ ಬಲವಾನ್ ಧರ್ಮಸ್ತೇ ನಾವಹೀಯತೆ ॥"

"In case of conflict of smritis decision should be based on reason. Custom is powerful and overrules the sacred law".

Yajnavalkya, in Chapter I, Verse 156, says that even Dharma (Law) itself, if opposed to the usages and wishes of the people, is not to be practised. The pre-eminence of custom and usage is also emphasized by several passages in the great Epic Mahabharata. In the Vishnu

---

लोकसिद्धस्यानुवादकान्येव प्रायेणास्मिन्प्रकरणे वचनानि ॥
[Vijnaneswara]

जातिजानपदान्धर्मान् श्रेणीधर्मांश्च धर्मवित् ।
समीक्ष्य कुलधर्मांश्च स्वधर्मं प्रतिपादयेत् ॥
[Manu, VIII, 41]

धर्मशास्त्रविरोधेतु युक्तियुक्तो विधिः स्मृतः ।
व्यवहारो हि बलवान् धर्मस्ते नावहीयते ॥
[Narada Smriti, I, 40]

Sahsranama, which forms part of the Mahabharata, we find—

" ಆಚಾರಃ ಪ್ರಥವೋ ಧರ್ಮಃ ।
ಧರ್ಮಸ್ಯ ಪ್ರಭುರಚ್ಯುತಃ ॥ "

"Custom is transcendent law, God is the lord of law".

Again in Verse 28 in Chapter 150 of Vana Parva in Mahabharata, we find the expression " ಆಚಾರಸಂಭವೋ ಧರ್ಮಃ ".

" Dharma is derived from Achara (practice or usage)".

In the same Parva, we have the following reply of King Dharmaraja to Yama, the God of Justice :—

" ತರ್ಕೋ(ಽ)ಪ್ರತಿಷ್ಠಃ ಶ್ರುತಯೋ ವಿಭಿನ್ನಾ ನೈಕೋ(ಽ)ಋಷಿರ್ಯಸ್ಯಮತಂ ಪ್ರಮಾಣಮ್ ।
ಧರ್ಮಸ್ಯ ತತ್ವಂ ನಿಹಿತಂ ಗುಹಾಯಾಂ ಮಹಾಜನೋ ಯೇನಗತಃ ಸ ಪಂಥಾಃ॥ "

" Reasoning is uncertain. The Srutis are conflicting. There is not a single sage whose doctrine is an unimpeachable authority. The essence of Dharma is placed in a cave (*i.e.*, inaccessible). That path is the proper one by which great men have gone ".

As regards progressive societies, in Maine's Ancient Law, it is stated :—

" With respect to them it may be laid down that social necessities and social opinion are always more or less in advance of law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to re-open. Law is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed ".

It cannot be seriously doubted or disputed that Hindu society is progressive, and that Hindu Law has never been and never will be stationary but has grown with Hindu society. It is everchanging with the change of social necessities and social opinion, and it has followed a course of development similar to the law of other nations. Though the Smritis claim, and are admitted to possess, an independent authority, it cannot be said that they

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(2) आचारः प्रभवो धर्मः ।
धर्मस्य प्रभुरच्युतः ॥
[Vishnu Sahasranama]

(3) आचारसंभवो धर्मः
[Vana Parva—Ch. 150, v. 28]

(4) तर्कोऽप्रतिष्ठः श्रुतयो विभिन्ना नको ऋषिर्यस्य मतं प्रमाणम् ।
धर्मस्य तत्त्वं निहितं गुहायां महाजनो येनगतः स पंथाः ॥
[Vana Parva]

finally and once for all laid down the law for all time to come. There were very often conflicts and obscurities, and Smritis of equal authority sometimes gave different principles (See the observations of Lord Hobhouse in *Sri Balusu's case*, I.L.R. 22 Mad. 398 at p.411). The result was that there came into existence from time to time a number of Commentaries and Digests purporting to interpret the law as laid down in the Smritis. They were not the products of the same age but came into existence in different ages to suit different conditions of society in different Provinces of India. Commentaries and Digests in turn formed a source of Hindu Law. The adaptability of Hindu Law to changing circumstances is never better evidenced in such detail as in these Commentaries. In the guise of commenting they developed principles of law, discarded those rules which had ceased to be in use and incorporated new ones which had come into usage. In fact, the value and authoritativeness of any Commentary depended entirely on the success achieved by it in assimilating the law of the province, it being impossible that a community, proverbially tenacious of its customs as the Indian is, would accept the theoretical deductions of any writer however able or clever (See an article by S. S. Setlur in the Law Quarterly Review, Vol. XXIII, page 202).

In discussing a passage in the Mitakshara relating to Samanodakas in the Law of Inheritance, Sir Shadilal, who delivered the judgment of the Privy Council in *Atmaram* v. *Baji Rao* observed—

> "The word 'Samanodaka' is not mentioned in the smriti of Yajnavalkya, who confers the right of inheritance upon gotraja (a person born in the same gotra or a gentile) sloka 135, but gotraja was apparently intended to be used in the same sense as Samanodaka in Manu Smriti. It was however recognized in course of time that the rule enunciated in the ancient texts, giving the right of inheritance to all agnates, however remote, and placing the cognates after them, was not in conformity with the feelings of the people; and Vijnaneswara when writing his commentary Mitakshara on the smriti of Yajnavalkya, probably found that a usage had grown up restricting the Samanodaka relationship to the 14th degree. He accordingly refrained from endorsing the all-embracing rule of Yajnavalkya and while mentioning it in the verse dealing with the subject, he gave prominence to the restricted scope of the word and supported it by citing Vrihad Manu. It must be remembered that the commentators, while professing to interpret the law as laid down in the smritis, introduced changes in order to bring it into harmony with the usage followed by the people governed by the law; and that it is the opinion of the commentators which prevails in the provinces where their authority is recognized" (A.I R. 1935 P.C. 57 at p. 58).

After referring to the observation of the Privy Council in 12 M.I.A. 397 that the duty of a Judge " is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage, for under the Hindu system of law clear proof of usage will outweigh the written text of the law " and referring also to the observations of that Board in 13 M.I.A. 373 at p. 390 that the Mitakshara " subordinates in more than one place the language of texts to custom and approved usage ", His Lordship proceeded to state, " It is therefore clear that in the event of a conflict between the ancient text-writers and the commentators, the opinion of the latter must be accepted ".

Thus, while Hindu Law was always stated to be embodied in the Smritis, this was intended to serve only as a sanction for its universal application and so that the persons governed by the law may be impressed with its authority. But as a matter of fact the Smritis and the Commentaries and Digests which purported to expound and comment on them were not rules laid down finally to be operative for all time. They always evidence a state of the law which was alive and in actual existence and are mere codifications of current usages. This becomes all the clearer when it is seen that these authorities " describe a state of things, which, in its general features and in most of its details corresponds fairly enough with the broad facts of Hindu life; for instance in reference to the condition of the undivided family, the principles and order of inheritance, the rules regulating marriage and adoption and the like. If the law were not substantially in accordance with popular feeling, it seems inconceivable that those who are most interested in disclosing the fact should unite in a conspiracy to conceal it " (Mayne on Hindu Law, 10th Edition pp. 4—5). The collection of local customs in Western India recorded by Steele affords remarkable testimony to the truth of this statement.

While it is thus clear that Commentaries are accepted in preference to Smritis on the ground that they more truly represent the usages followed by the people who are governed by the law, the Commentaries themselves yield place when they conflict with established custom. The commentators also accepted and emphasized this supreme value of custom and gave it the fullest

effect. This importance assigned to custom in the Srutis, the Smritis and the Commentaries is the reason and a true measure of the adaptability of Hindu Law to changing conditions of society noticed already.

This state of the law which was always changing, moulding the life of the people governed by it, and being in turn moulded by the usages of those people, continued to develop until the eighteenth century when, under the advent of the British in India, the judicial system now in existence was first established. With a view to the implementation of the announcement of the East India Company to administer Hindu Law to the Hindus, every European Court was provided with its Pandit whom the Judge was bound to consult upon points of Hindu Law. When they were consulted these Pandits invariably referred to the earlier authorities and gave opinions which were either in direct conformity with those authorities, or which constituted such developments of, or variations from, earlier law, as have been accepted as representing existing usage (See Mayne in an article in the Law Quarterly Review, Vol. III, P. 446 at P. 449). But this practice of consulting Pandits terminated in 1863 and it became difficult (except in limited cases when family or even local custom could with great difficulty be proved and followed even against accepted principles of law) to bring the law into conformity with the changing conditions of Hindu society. This was all the more deplorable because this state of arrested progress coincided with a period when under the impact of western knowledge, habits and systems of law, Hindu Society was changing rapidly and casting off outworn customs and adopting a new mode of life to which the law embodied in the Smritis and Commentaries was ill-suited or at least inadequate. It was of this stage that Mayne has remarked "The consequence was a state of arrested progress, in which no voices are heard unless they came from the tomb " (Mayne on Hindu Law, IX Edition P. 44). But even of the period in the long history of Hindu Law of which it was written, it was perhaps an exaggeration and in any case became very soon thereafter incorrect and disproved. A long succession of eminent Judges equally learned in Sanskrit and law helped in developing Hindu Law to suit modern needs. A series of eminent writers also helped in this development by their labours.

But by far the most important cause in recent years which is responsible for once again relating law with life

and social conditions is legislation. All other sources of Hindu Law having become outmoded and incapable of being supplemented, legislation has stepped into the field and this process is gaining importance from day to day as indeed it is natural to expect. Fortunately, this source is not foreign to Hindu Law. Rajashasana is one of the four kinds of laws that are required to be administered by kings in the decision of a case. Rajashasana evidently refers to king's edicts or ordinances and this will prevail in supersession of Dharma, Vyavahara and Charita. Whatever may have been the use to which this power to promulgate an edict may have been put to earlier, there remains no doubt that "the age of the legislator has now come" (Mayne's Hindu Law, Preface to 10th Edition). In no other way can Hindu Law continue to develop in line with changing conditions.

From 1850 when the Caste Disabilities Removal Act was passed down to the present day, major changes in the Hindu Law have been in fact effected by legislation. But, while these changes have doubtless occurred, the question of codifying the entire body of Hindu Law has not been seriously considered, except recently in the Provinces of India where such a comprehensive Code has been prepared by a body of experts. In view of the limited terms of reference of the Committee, it appears unnecessary to examine such an interesting question at any length. But it may not be out of place to state that a complete Code of the Hindu Law would perhaps go a long way to bring the law in line with the growing social consciousness of the Hindu community. Particularly in Mysore which has always been known for its progressive policies, such a Code would not meet with the difficulties which it has to encounter in the Provinces of India with their widely differing schools of law and conflicting local customs. Mysore is governed by a single school of law, the Mitakshara, and it should not be difficult to formulate a simple and compact Code in which the law would be easily accessible and understood by all those persons who are governed by it.

On one question, however, Mysore has already taken the lead in the matter of reform of Hindu Law. The urgent need for the improvement of the position of women under the Hindu Law having been expressed more than once, Government constituted a Committee in 1929 under the chairmanship of a very distinguished retired Chief Justice of the Mysore High

Court to indicate the reform called for in this branch of Hindu Law. In a Report informed with deep learning and progressive outlook, that Committee reviewed the existing state of Hindu Law, and in the light of public opinion received by it in the form of replies to a Questionnaire broadcast throughout the State and even outside it and after seeking the advice and suggestions of various distinguished lawyers and Judges in different parts of India, formulated a Bill embodying its recommendations. This Bill which has been appended to the Report of that Committee is the precursor to the Hindu Law Women's Rights Act, 1933. This Act of 1933 marks a remarkable stage of development in Hindu Law and was practically the first piece of legislation in India which dealt with such important and fundamental branches of Hindu Law as inheritance, joint-family and women's estate. So far as Mysore is concerned, it has gone a long way in the emancipation of women and generally brought Hindu Law once again in line with modern conditions of society. The present Committee has been much benefited by the Report of the earlier Committee.

The Bill appended to the Report of that Committee was referred to a Select Committee of the Legislative Council and there underwent some far-reaching changes. Thereafter, when the Bill, as amended by the Select Committee, was considered by the Legislative Council, further amendments were effected therein, with the result that, in many respects, the Act of 1933 differs materially from the original Bill. These changes will be noticed in their proper places in this Report and it is sufficient to state at present that these changes in the Bill were to some extent responsible for the interpretation put upon certain of the provisions of the Act which were not in keeping with the intentions of the Committee which originally drafted it.

However, when legislation is once undertaken in any branch of law, changes in that law can be effected only by further legislation. All other instruments of reform became inapplicable thereafter. Even judicial interpretation cannot, where it is concerned with legislation, effect any far-reaching changes. Where such legislation is in respect of personal law and has to keep in line with the changes in habits and mode of life which time inevitably brings about, the need for constant revision becomes self-evident. It is now over fifteen years since the Act of 1933 came into force. Not only have several difficulties

in the interpretation of the provisions of the Act been experienced by Courts, but the considerable progress in social conditions which these years have brought about renders it necessary to undertake a re-examination of the Act. This is the work which has been entrusted to this Committee.

There is one aspect of legislation, however, which requires some consideration. Where legislation, original or amending, relates to the personal laws of a community and seeks to effect changes in that law, the question arises whether it should not be preceded by a unanimous demand from, or at the least merit the support of, that community. This question naturally assumes the greatest importance in a field like Hindu Law where principles of law are so intertwined with the personal and family life of the people that a change cannot be effected in one without affecting the other. It may, however, be generally said that to expect unanimous support for any reform would be to prevent it altogether. In fact, reform in any direction of human activity is usually the result of the persistent demands of an enlightened few, and to expect the entire community to be brought round to any one view before implementing it by legislation is to expect the impossible. In an address delivered at the Twenty-first Anniversary of the British Institute of Philosophy on 23rd July 1946, Professor A. V. Hill, D.Sc., F.R.S., Foreign Secretary to the Royal Society observed as follows :—"In the main, human society alters because of the initial re-activeness of quite a small proportion of its numbers, not because of general bulk initiative. The effect of that re-activeness depends, it is true, on the nature of the social medium in which it exists, and that is conditioned by the statistical distribution of the human characteristics and experience of its members. But at any given moment initiative must come, not from many, but the few."

While therefore one has to look to the demands of advanced opinion to initiate reform, it does not follow that every such change should be supported where it is unacceptable to, or even actively opposed by, a large body of opinion. To arrive at a just and proper test which would resolve this conflict would depend on the facts and circumstances of each case. Generally speaking, it may perhaps be stated that the views of every section of the community, however conservative they may be, are entitled to consideration. But this should not stand in

the way of reform where such reform conduces to the well being of the community, does not involve active interference with religious beliefs or practices, and is aimed solely at relating law to the changing needs of the community. In this connection, the following observation made by Sarvadhikari in connection with the Law of Succession may be usefully referred to :—

> "As society progresses, and circumstances change, the old principles must be viewed in a new light and adapted to meet the present social exigencies. It would be wrong to suppose that the Law of Succession has been totally petrified, and admits of no further growth. Grow it must with the growth of society. There is a growing disinclination in the courts of the country to treat Hindu Law as an inanimate carcass, but to look upon it as a living organism, which is capable of meeting all social requirements..... There is great vitality in Hindu Law, and if we only know the way in which its vital powers can be preserved, we shall see that it yet has a long career before it."

The limited terms of reference of this Committee render it unnecessary to pursue this question any further. It may also be added that the replies received from the public to the Questionnaire issued by it afford a correct index of the trend of public opinion at various levels, and it is gratifying to see that such opinion is generally in favour of the changes indicated in the Questionnaire.

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CHAPTER II.

Inheritance.

The course of development of the Hindu Law of succession, from what it was in the primitive stages of Hindu society to what it is to-day, is a striking illustration of the saying that law is not the creature of a day but it grows from the customs of successive ages. In common with all other nations in which, at the early stages, society was composed of patriarchal families, the peculiar features of such societies, namely, succession by primogeniture, exclusion of females from inheritance and right of inheritance to be governed by the rule of agnatic kinship, were present in the early stages of Hindu society. In the Vedic period when Hindu society consisted of patriarchal families, the eldest son became the leader of the family after the death of the patriarch and became entitled to the family property as his birthright. In other words, primogeniture was the settled law of succession in that period. It was so, not only when the Hindu society was in the stage depicted in the Rigveda but also until the society progressed to the condition depicted in the Taittiriya Brahmana of the Black Yajurveda when the rule of primogeniture began to give way to the rule of equal distribution of property among all the sons of the deceased owner. The Taittiriya Samhita and the Taittiriya Brahmana of the Krishna Yajurveda (Black Yajurveda) were works of two successive ages of Vedic literature. That the principle of primogeniture, as a rule of succession, was in vogue even at the time of Taittiriya Samhita can be gathered from the following words in that work—"They distinguish the eldest son by heritage". It is only in the Taittiriya Brahmana that we find mentioned—"Manu divided his wealth among his sons"—a passage strongly indicative of the fact that the rule of equal distribution, as the law of inheritance, was gradually superseding the doctrine of primogeniture. Manu referred to in Taittiriya Brahmana is not Manu the author of Manu Smriti, but is supposed to be the author of Manava Dharma Sutras extant in the later stages of the Vedic period. However, we find from the works of the Sutrakaras, Gautama and Baudhayana, that the decline of the rule of primogeniture and the rise and progress of the principle of equal distribution were gradual and were

not brought about all at once. It was not until the society reached the stage when Yajnavalkya flourished that the rule of primogeniture, as the law of inheritance, was totally supplanted by the principle of equal distribution among the sons of the deceased. Yajnavalkya says— "Let the sons divide the wealth of their deceased father equally among themselves". A perusal of Yajnavalkya Smriti clearly indicates that society had progressed very far during his time so that he was obliged to advocate thorough reforms in the several branches of law.

A historical study of the Hindu Law of succession convinces us that the participation of women in heritable property does not date from very early times. In the third Mandala of the Rigveda, the second verse of the 31st hymn lays down the principle of female exclusion. That hymn may be rendered thus—

> "A son does not vacate the inherited wealth for his sister; he makes her the repository of the issue of him who takes her; although the parents procreate both the males and the females— the one is a worker of good deeds, the other is graceful".

Sayana, the great commentator, explains this hymn thus—

> "Although both sons and daughters are no doubt the offsprings of the same identical parents, yet the son is preferred in inheritance, because he is the worker of good deeds, of religious oblations and sacrifices; but the other offspring, a daughter, is too graceful, that is to say, she is decked and clothed with fine dresses and ornaments and thereby becomes but an ornamental member of the family fit for no useful purposes. It is not therefore inequitable to exclude her from inheritance".

Coming next to the Yajurveda, we find the text—

> "ತಸ್ಮಾತ್‌ಸ್ತ್ರಿಯೋ ನಿರಿಂದ್ರಿಯಾ ಅದಾಯಾದಾಃ"

(Therefore females are feeble and unworthy of inheritance.)

In the Taittiriya Yajurveda Samhita, Kanda VI, Prapataka V and Anuvaka VIII, Baudhayana also says—

> "A woman is not entitled to heritable wealth; for, according to the authority of the Veda, women and persons without sense are without heritable wealth".

The Vedic text referred to above has been cited by Haradatta in his comments on the Dharma Sutras of Gautama who must also be taken to be opposed to the succession

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(1) तस्मात्स्त्रियो निरिन्द्रिया अदायादाः

[Yajur Veda]

of females generally. Apastambha, in his Dharma Sutras, (II, 6, 14, 2) says—

"ಪುತ್ರಾಭಾವೇ ಯಃ ಪ್ರತ್ಯಾಸನ್ನಃ ಸಪಿಂಡಃ "

(On failure of sons, the nearest sapinda takes the inheritance).

Haradatta, in his commentary relying on the word 'sapinda' in the masculine, says that Apastambha clearly laid down in that sutra that females are not entitled to inheritance. Vasishta, in his chapter on succession, does not mention any female as entitled to inherit save the appointed daughter.

From the above texts, it is clear that all ancient authority was opposed to the succession of females generally. Such exclusion of females from inheritance was, as already mentioned, a patriarchal characteristic of the society prevailing at that time. Women were naturally excluded from inheritance, because they were utterly unfit in those troubled times to administer the family affairs as heads of the corporation and were incapable of preserving the family property from the encroachment of powerful neighbours. It was not until society had arrived at a peaceful state that some of the females were given the right to inherit. In the days of Manu we find that the following females were entitled to inheritance, namely, the daughter, the mother and, the mother being dead, the father's mother. The introduction of the right of these three females in the place of the older law of the patriarchal period was made step by step. It was not until the time of Brihat Manu, who saw that the public were determined to see justice done to the widow, that the right of the widow to inherit was recognized by him—

"If a widow kept unsullied her husband's bed, she might be recognized as an heir".

It was not until the time of Yajnavalkya, who made a methodical and businesslike statement of the course of succession, that the widow was placed at the forefront of his enumeration of heirs to succeed to the estate of a person dying without leaving a son, son's son, or son's son's son. As already mentioned, he was a great reformer and, in his enumeration, he introduced among heirs 'Gotrajas' and 'Bandhus' intentionally leaving those expressions vague so as to admit of an expansion if the

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(2) पुत्राभावे यः प्रत्यासन्नः सपिण्डः

[Apastambha, II, 6, 14, 2]

further progress of society so demanded. By the time of Vijnanesvara, the greatest commentator on Yajnavalkya Smriti, the right of the following eight females to inherit had been recognized, namely,—

(1) the wife,
(2) the daughter,
(3) the mother,
(4) the paternal grandmother,
(5) the paternal great-grandmother,
(6) the paternal great-great-grandmother,
(7) the paternal great-great-great-grandmother and
(8) the paternal great-great-great-great-grandmother.

To the above list was added the sister by Neelakanta, the author of the Vyavahara Mayukha.

Females other than those expressly mentioned in the Mitakshara fall under two categories, namely,—

(1) the daughters of the family, married and unmarried; and

(2) the widows of male gotraja sapindas.

In the Bombay school of law, in which Neelakanta, the author of the Vyavahara Mayukha, exercised great influence, the sister has got a high place ranking immediately after the paternal grandmother. But the high status accorded to her is not allowed to other females born in the family such as father's sister, or son's daughter, even in the Bombay school of law and, though in that school the word 'Sapinda' is interpreted to include females also, the female descendants of the propositus and of his ancestors are not included among gotrajas but are given the right of inheritance as bandhus. But the Bombay school of law recognizes widows of predeceased gotraja sapindas and samanodakas as heirs, holding that they are all sagotra sapindas of the deceased and inherit as such before the bandhus. It was so until the Hindu Law of Inheritance Amendment Act II of 1929 was enacted in British India. Under that Act, the son's daughter, the daughter's daughter and the sister inherit with gotraja sapindas, the son's daughter succeeding immediately after the father's father, the daughter's daughter next after her and the sister next after the daughter's daughter. The high place occupied by the sister immediately after the paternal grandmother even before Act II of 1929 was enacted is

retained by her even after the Act. Before Act II of 1929, the only females recognized as heirs in the Bengal, Benares and Mithila schools of law were those expressly named as heirs in the texts, those schools following the ancient principle that women are held to be incompetent to inherit, unless named and specified as heirs by special texts. That doctrine, however, was relaxed to a certain extent in the Madras Presidency where the female descendants of the propositus and of his ancestors who can be brought within the class of bhinnagotra sapindas are allowed, though not specially mentioned in the texts, to inherit as bandhus, such as sister, father's sister, son's daughter, brother's daughter, sister's daughter, daughter's daughter and so on. According to that school of law, those females, not being gotrajas, can come in only if they establish their title as bandhus. The Madras High Court proceeds on the principle that the list of bandhus given in the Mitakshara is not exhaustive but is only illustrative and there is nothing in the word 'sapinda' to exclude a female, and there is no reason therefore why females who can satisfy the conditions of a bhinnagotra sapinda or a bandhu, should not be recognized as heirs coming under the term 'Bandhus' in the text of Yajnavalkya. However, under the Hindu Law of Inheritance Amendment Act of 1929, which came into force on 21st February 1929, the son's daughter, the daughter's daughter and the sister rank as heirs as gotraja sapindas in all Provinces of India where the Mitakshara Law prevails.

Except in the Bombay Presidency, the widows of predeceased gotraja sapindas were not regarded as heirs anywhere else. But Act XVIII of 1937 enacted in British India makes the widow of a predeceased son and the widow of a predeceased son's predeceased son heirs throughout the Provinces of India except in the Dayabhaga school. In this connection, it may also be mentioned that when legislation was undertaken in Mysore to amend the Hindu Law as to the rights of women and in certain other respects by enacting Act X of 1933, section 4 therein giving the list of heirs and the order of succession was far in advance of, and more progressive than, the law prevailing in British India, inasmuch as in the list of heirs mentioned in that section, are included several female descendants of the propositus and of his ancestors, as also the widows of gotraja sapindas who have been allotted their proper rank in the hierarchy of heirs.

With regard to the principle of agnatic kinship, which was one of the distinctive features of ancient Hindu society, it must be said, just as in the case of early Roman rule, that the principle that was followed was that a female terminated relationship, as the gotra was the cherished institution of the society at the time, and the females, soon after marriage, were regarded as cut off from all connection with the stock from which they sprang, with the result that the society considered the females as of no account in point of relationship. Such a conception got gradually weakened as society progressed, and it was therefore possible for Yajnavalkya to take the bold step of specifically mentioning bandhus or bhinna gotra sapindas in the list of heirs. It may be mentioned that, in the course of development of Roman Law also, the distinction between agnates and cognates was done away with in the time of Justinian. Both Vijnanesvara and Jeemutavahana, leaders of two antagonistic schools of Hindu Law, have been able, by interpreting the word 'sapinda' in different ways, to follow the lead given by Yajnavalkya in entirely disregarding the original agnatic principle and in including bandhus in the list of heirs. There can be no doubt that it was a progressive step in the development of the law of succession.

Coming next to the meaning of the word 'sapinda' which has played a very important part in moulding the development of the Hindu Law of Inheritance, it must be said that the word "sapinda" often occurs both in Gautama and Apastambha Sutras and has been also used in various places in the Manu Smriti. The word 'sapinda' signifies, among some thirteen or fourteen senses enumerated by Professors Wilson and Taranath in their respective dictionaries, 'the body' as well as 'a ball of food' such as is offered in Sraddhas to the manes of a departed ancestor. It is not clear from the Sutras of Gautama and Apastambha and the Institutes of Manu in what sense that word has been used by them. To those ancient legislators it mattered very little whether the sapinda relationship referred to by them was based upon 'consanguinity' or upon 'the competence to perform exequial ceremonies' because, as observed by Sarvadhikari, the Tagore Law Professor,

> "Those who were bound by ties of blood lived within the same family precincts, and were bound also to offer those holy pindas which spiritually benefitted the deceased. The property was never allowed to go out of the family. Those who formed the family-group were alone entitled to succeed, and it was in very

exceptional cases that the property was allowed to go out of the family. If the deceased was associated with his brethren, then, as now, the property remained in the family. The perpetuation of the family and the performance of the exequial ceremonies were inseparably connected together. Those who undertook to perpetuate the family were also bound to perform the exequial rites. Those who perpetuated the family name received the family property, and presented the exequial pindas to the deceased. It never happened that one class of men received the property and another class of persons performed these ceremonies. The nearest kinsmen received the property, and the nearest kinsmen performed the Sraddha in honour of the deceased."

The learned Tagore Law Professor goes on to say—

"It was only when the family was disintegrated, when the property came to be distributed among persons who owed no allegiance to the primitive family, when it was necessary to introduce a class of men as heirs, who were not bound by religion to perform the Sraddha rites, that a sharp distinction was to be made with regard to those persons who received the property simply by virtue of their consanguinity to the deceased, though they were not competent to perform the exequial rites."

It shows that, in order to mould the law to suit the respective societies in which Vijnanesvara and Jeemutavahana flourished, so as to bring the law in conformity with the usages prevailing in those respective societies, they had to requisition to their aid the different grammatical meanings of the word 'sapinda' used in the following text of Manu—

"ಅನಂತರಃ ಸಪಿಂಡಾದ್ಯಸ್ತ್ವನ್ಯ ತಸ್ಯ ಧನಂ ಭವೇತ್"

(To the nearest sapinda the inheritance next belongs.)

Jeemutavahana, the author of the Dayabhaga, considered the word 'sapindya' to mean connection with the act of offering a pinda or rice ball. Vijnanesvara, the author of the Mitakshara, understood the word 'pinda' as meaning 'body' and 'sapindya' to mean 'connection by particles of the same body'. It may be useful to refer here to what Vijnanesvara himself says as regards the meaning of the word 'sapinda'—

"The word 'sapinda' is a compound word made up of 'sa' and 'pinda'. 'Sa' or 'samana' means 'same', and 'pinda', 'body'. The word 'sapinda' therefore, means a person who has particles of the same body. One who does not possess parts of the same body is not a 'sapinda'. Sapinda relationship thus exists through connection of the parts of the same body. For example, there is sapinda relationship between the son and

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अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत्

[Manu]

his father by reason of the connection of the parts of the son's body with those of his father's. In this way there is sapinda relationship between him and his grandfather and others by reason of the connection of his body with theirs through the father. Thus with the mother, by reason of the connection of his body with the mother's. Likewise with the maternal grandfather and other kinsmen through the mother. And so even with the mother's sister and her brother and other maternal relatives by reason of their connection with the same body. So also with the paternal uncles, paternal aunts, and others. So with the wife by reason of her being a common generator of the same body (the son). In this way sapinda relationship mutually exists between the wives of different brothers as also between them and their husband's brother, etc. by reason of their producing a body (the sons) in conjunction with those who are descended from a common progenitor. Wherever, therefore, the word 'sapinda' occurs, it should be understood to include those persons who are connected together directly or indirectly by parts of the same body."

There can be therefore no doubt whatever that the test of heirship according to the Mitakshara is propinquity, that term being taken in the sense of nearness of blood. That is also the view taken by later scholiasts of the Mitakshara school of law, namely, Visveswarabhatta and Lakshmidevi who took the cognomen of Balambhatta and is the author of a commentary on the Mitakshara. The former in his Subodhini says—

"Propinquity chiefly depends upon an abundance of corporal particles."

In his Madana Parijata he says—

"ಸನ್ನಿಹಿತಃ ಪ್ರತ್ಯಾಸನ್ನಃ ಶರೀರಸಂಬಂಧೇನ"

"One person can be near to another by corporal relation alone".

According to Balambhatta—

"Propinquity, according to law and usage, should properly be understood to exist through the medium of corporal relation alone".

Even in Mitakshara jurisdictions this simple, reasonable and natural enunciation of the test of heirship as propinquity of blood did not come to be accepted without some effort and conflict. Colebrooke, in his translation of the Mitakshara, paraphrased 'sapinda' as 'connected by funeral oblations', thus tending virtually to obliterate one of the main distinctions between the Dayabhaga and the Mitakshara schools. Dr. Sarvadhikari, the Tagore Law Professor, suggested that while consanguinity determined the heritable right under the

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सन्निहितः प्रत्यासन्नः शरीरसम्बन्धेन

[Madana Parijata]

Mitakshara Law, propinquity determined the preferable right of a kinsman. He elaborated his view thus:—

> "It is quite clear then that in a question of priority between two persons claiming as heirs, or between two classes of heirs, the principle of propinquity founded on superior efficacy of oblations determines the precedence among contending kindred. The principle of propinquity is to be applied when the heirs have been found, and the mere question is—Who is to be preferred, and who should be excluded? The principle of propinquity founded on superior efficacy of oblations returns no ambiguous answer to this question. He who confers the greatest amount of benefit on the deceased, entirely excludes those who confer inferior benefits. If opposing parties confer benefits in equal degree, they have an equal right to the inheritance. The competence to confer spiritual benefits on the deceased, thus exactly measures the degree of kindred in which a given claimant stands to the late proprietor, and is an infallible guide in determining the preferable right to succession".

That view at one time found favour even with the Privy Council in *Buddha Singh* v. *Laltu Singh*, I.L.R. 37 All 604. Their Lordships of the Judicial Committee observed in that case:—

> "It is absolutely clear that under the Mitakshara, whilst the right of inheritance arises from Sapinda relationship or community of blood, in judging of the nearness of blood relationship or propinquity among the Gotrajas, the test to be applied to discover the preferential heir is the capacity to offer oblations".

The echoes of this discussion have been heard as recently as 1937-38, when an argument was advanced before the Privy Council that while agnatic succession under the Mitakshara Law, as administered in Madras, depended solely upon proximity of blood connection, such proximity of blood relationship went out altogether and religious efficacy came in as the sole test among cognates. Their Lordships had no hesitation in repelling such an argument, and held that it was only when the test of proximity failed (*e. g.* heirs equal in degree) that religious efficacy came in (See *Balasubrahmanya* v. *Subbayya* A.I.R. 1938. P.C. 34).

This controversy due to fundamental difference in approach, which is reflected in the judgments of the two learned Hindu Judges of the Mysore High Court in *Krishnamurthi* v. *Subba Rao* 24 Mys. C.C.R. 77, has now been set at rest so far as Mysore is concerned, by section 4 of the 1933 Act which enumerates in order a certain number of heirs followed in section 5 by certain general rules of preference among subsequent heirs. The order of succession set out in section 4 gives high priority to certain

women belonging to the intestate's family who did not enjoy those rights before the Act. In thus relating succession to the dictates of natural affection and justice, the 1933 Act has, as it were, set the seal of approval on Vijnaneswara's progressive views which subsequent commentaries and judicial decisions had whittled down to nothing. It may be therefore safely asserted to-day that, in matters of inheritance, sex can be no bar or disqualification, and that the rule of Manu as interpreted by Vijnaneswara that heirship depends on propinquity of blood, has once again become the sole criterion irrespective of sex. It would be unreasonable indeed if texts written centuries ago were to be advanced against the recognition of ties of blood and the natural development of Vijnaneswara's views arrested in that direction. The death blow, which the spiritual benefit theory has received in Mitakshara jurisdictions, can have served little or no purpose if women were not thereby enabled to enter upon their rightful heritage and to claim succession to property to which, relationship to the intestate entitles them. At a time when in other parts of India the spiritual benefit theory was still corrupting the views expressed in the Mitakshara, and when women were excluded from inheritance in many Provinces, subject to certain recognized exceptions, legislation was undertaken in Mysore to give women their legitimate places in the order of succession.

Any changes therefore which the Committee may recommend in section 4, other than changes of a purely drafting character, ought to be in the direction of perfecting that order so as to conform to the sole test of nearness of relationship or natural ties of love and affection. The Committee considers that the duty cast upon it of bringing the Act in consonance with the spirit of modern times will be discharged only by adopting such a criterion.

Viewed in this light, section 4 would appear to be capable of changes in one or two directions. As the section stands, and in this the Act merely followed the existing law, a son, grandson or great grandson excludes all other heirs and takes the estate completely. In a family, however, consisting of a number of persons like wife, son and daughter, it appears to the Committee to be more reasonable to presume that not only the son, grandson or great grandson but the wife and daughter also would command the love and affection of the propositus, and that to exclude such close and dear relations from a share in

the inheritance may not be said to be either equitable or to correspond to the probable desires of the propositus. It is no doubt true that the power to make a testamentary disposition is available to him and that it is open to him to bequeath his property in any manner he likes. But as long as he does not make a will and the law has to provide for heirs to succeed to his estate, it appears to stand to reason that the order of succession should correspond as nearly as possible to what the propositus might have desired should be the order. As a general rule, that order has to be guided by dictates of natural love and family relationship, leaving it to the propositus in cases where, for special or personal reasons, he desires to make a disposition otherwise, to do so by will. In this view, the Committee considers it desirable to recommend the amendment of section 4 so as to permit of simultaneous succession, to the heritable estate, of certain close relatives of the deceased in addition to, and even where there are, sons or grandsons or great grandsons.

The Committee in suggesting such simultaneous succession is not introducing any notion unknown to the Hindu Law. The succession of sons, grandsons and great grandsons is itself an illustration of simultaneous succession. In regard to the succession to certain kinds of stridhana, namely, Anvadheya and Bhartridatta, the simultaneous succession of sons and daughters and, in their default, daughters' daughters and daughters' sons has been recognized in many schools. In the 1933 Act and in section 4 itself, the simultaneous succession of a number of heirs has been recognized [See section 4(5)]. By far, however, the strongest consideration that has weighed with the Committee is the fact that such simultaneous succession was intended to be recommended by the Committee which met in 1929 and was in fact included in the Bill drafted by it. Clause 10(1) of the Bill drafted by that Committee and appended to its report was as follows :—" The widow, the mother, the unmarried daughter and the unmarried sister, if any, of every Hindu male shall be entitled to a share for herself in all property and interest in property of such person, or if he be dead which belonged to such person at the time of his death". In its report, that Committee stated as follows on this subject :—

" Thus the only female relatives who, in our opinion, should be recognized as eligible for specific shares are the widow, the mother and the unmarried daughter and sister of every Hindu

male, *whether he is a member of a coparcenary or not.* Their shares would naturally come out of property and interest in property belonging to him or, if he be dead, which was vested in him at his death. His self acquisitions would not be available as long as he was alive, but after his death should become divisible in the hands of his heirs, male or female (pp. 110-111)." (*Italics ours.*)

Unfortunately, this statement occurs in a section of the Report dealing with rights of female relatives to shares, and this section commences by speaking of a partition of joint-family property and the entire section treats of joint-family property and rights of certain women thereto. The marginal note to this clause is "certain females entitled to shares at a partition". These facts, coupled with the existence of a separate clause 6 in the Bill which set out the order of succession to heritable property separately (and where the subject of shares in heritable property could be naturally expected to be mentioned, but was not) evidently led to the impression that clause 10 was limited in its scope to joint-family property. The result was that, in its passage through a Select Committee of the Legislative Council, this clause underwent a substantial amendment and became limited to joint-family property only. The clause as so amended is identical with section 8 of the 1933 Act.

Be that as it may, the Committee feels that the time has come to recognize the right of certain close relatives of the deceased to inherit along with the son, grandson and great grandson. As set out in some detail in the memorandum appended to the Questionnaire issued by the Committee and printed as an Appendix to this Report, even other systems of law provide for the simultaneous succession of widow and daughter in addition to son.

But by far the more difficult questions are as to the actual relatives of the deceased who should be given this right and their shares in the estate. The wife naturally requires the first consideration. She will be first in the husband's affections and would have shared with him in the vicissitudes of life. In fact, the Hindu Dharma Sastra conceives of the husband and wife as forming one body. In the Provinces of India also her rights have been recently recognized and under Act X of 1937 she shares in her husband's estate with her children. The Committee has no hesitation whatever in recommending that the widow should be one of the persons entitled to succeed simultaneously, with her sons, to her husband's estate.

The daughter also deserves consideration. If sex should be no bar to inheritance and if woman should not, by reason of her sex, enjoy less rights to property than man, there can be little to distinguish a daughter from a son. According to Manu,

"ಯಥೈವಾತ್ಮಾ ತಥಾಪುತ್ರಃ ಪುತ್ರೇಣ ದುಹಿತಾ ಸಮಾ ।
ತಸ್ಯಾಮಾತ್ಮನಿ ತಿಷ್ಟಂತ್ಯಾಂ ಕಥಮನ್ಯೋ ಧನಂ ಹರೇತ್ ॥"

"A son is even as one's own self and the daughter is equal to the son; so long as she is there as the father's own self, how can any other take the property?" Manu IX. 130.

It is also difficult to assume that a parent would be less attached to or have less affection for his offspring merely by reason of sex, or that he would intend some only of his children to get his estate to the exclusion of the others. There is, however, one point of difference between, a son and daughter which materially affects the present question, and has in fact not been lost sight of by the ancient Hindu Law-givers. A daughter after her marriage leaves the family of her father and becomes a member of the family of her husband. Whatever property she gets from her father will therefore go out of her father's family and enure to the benefit of her husband's. Again, in her husband's family she gets rights as a wife. And then, for her marriage, a considerable portion of her father's property will have been expended. It was for these reasons that, according to Smritis and also Vijnaneswara, an unmarried daughter was preferred to a married one, and an unprovided daughter succeeded in preference to an endowed one. This principle is settled in the Mitakshara school that, as between daughters, the inheritance goes first to the unmarried daughters, next to daughters who are married and indigent, and lastly to daughters who are married and possessed of means. This difference is not without importance when the question of granting rights of simultaneous succession is under examination. The estate of the father has been used for the marriage of a daughter, which usually is not an inconsiderable item of expense. The daughter as wife gets affiliated to a different family where fresh rights by virtue of her marriage spring up in her husband's estate.

यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा ।
तस्यामात्मनि तिष्टन्त्यां कथमन्यो धनं हरेत् ॥

[Manu, IX, 130]

On the other hand, an unmarried daughter remains yet to be married and her marriage expenses would be a reasonable charge upon the father's estate just as her married sister's was. It appears therefore necessary, while conceding a daughter's right to simultaneous succession, to limit it to an unmarried daughter. In the 1933 Act where certain daughters are given a right to share at a partition, only unmarried daughters have been given this right. The Committee therefore recommends that unmarried daughters also should be given the right of simultaneous succession.

However, there is one important limitation which the Committee considers it necessary to emphasize. Where a group of heirs are stated to succeed simultaneously, it follows that if only one class in such group is in existence, that class alone will succeed. For instance, where a son and widow and unmarried daughter are given this right, an unmarried daughter will succeed along with or even in default of a son and widow. Having given to the unmarried daughter in preference to a married one the right of simultaneous succession, the Committee feels that where no other class of simultaneous heirs is in existence, this preference of an unmarried daughter to a married one should cease to operate and that all daughters should take equally. The law in force to-day as set out in section 4 of the 1933 Act is to the effect that in the absence of male issue to the third generation and the widow, all daughters, whether married or not, should take their father's estate together. This provision of law will be altered to the detriment of married daughters, if a limitation to the right of simultaneous succession of an unmarried daughter is not recognised. The married daughter will lose all rights in the father's property, rights which she possesses to-day, unless an unmarried daughter's right to succeed simultaneously is made dependent on the existence of another class of simultaneous heirs which under the existing law takes earlier, namely, male issue up to the third generation or the widow. The Committee therefore recommends that, though an unmarried daughter should be a simultaneous heir yet, in cases where no male issue to the third generation or a widow is in existence, she should take with all her sisters, whether married or widowed. While giving an unmarried daughter higher rights than she possesses, such a provision will also ensure to married or widowed daughters their existing rights.

Having so far dealt with the case of the widow and daughters, the question whether there should be any other relatives who should also be given this right of simultaneous succession next arises for consideration. The father, the mother, the widowed daughter-in-law and the widowed grand-daughter-in-law are the relatives whose claims would require notice. Of these, the widowed daughter-in-law and the widowed grand-daughter-in-law have been given such rights in the Provinces of India under the Hindu Women's Rights to Property Act, 1937. The daughter-in-law (and what is said about the daughter-in-law applies also to the grand daughter-in-law) is a person who on marriage leaves her father's family and becomes a member of her husband's family. As a married daughter she does not get any right of simultaneous succession to her father's estate. At first sight therefore, it appeared to be reasonable to treat her as a close relative of the intestate and to give her also rights of simultaneous succession. But it often happens in practice that a daughter-in-law, after her husband's death, does not live with her husband's people. She moves back into her father's family or what remains of it. The same considerations, which prevailed upon the Committee to exclude a married daughter, apply in her case also. And while it may be said that, in joint-family property of her husband's family in which her husband had a right by birth and enjoyed it with his father, his widow should not be denied any rights whatever and that, even though she was not allowed to take her husband's place and his share, she should at least be given substantial rights therein, entirely different considerations apply in the case of the heritable property of the father-in-law. The husband even when alive had no rights therein. It cannot be said that, by her husband's death, she has lost any rights in the property which her husband possessed before his death. It has also to be remembered that what is being examined now is not any order of succession to heritable property so that her exclusion therefrom would deprive her of existing rights, but a new right of simultaneous succession to certain close relatives of the deceased. A further argument, which weighed with the Committee when examining this topic, was one of excessive fragmentation of property. The Committee feels that no new rights, which it will recommend for acceptances, hould so cut up property as to make it valueless in the hands of every one who gets a share of it. The rule

now proposed that those nearest in blood and affection to the deceased should take together ought not, in the view of the Committee, be extended beyond the barest necessities of the case and should be confined to those who are, in view of their closeness to the deceased, legitimately entitled to it and should not be extended to many persons though they too may be his close relatives. The average value of a person's heritable property is not very high, and even the application of the Partition Act may not be of much help in a case where a sharer has not enough money to buy up the other's shares. The avoidance of excessive fragmentation is therefore a consideration which should not be ignored. It might perhaps also be stated that in the replies received from the public to the Questionnaire issued by the Committee which indicate an almost universal approval of the proposal to give rights of simultaneous succession to widows and daughters (opinion being divided but in favour of unmarried daughters only), there has been a significant lack of such public opinion in favour of other relatives including the widowed daughter-in-law. The Committee has therefore come to the conclusion that, beyond the widow and unmarried daughter, no other relatives should be given the right to succeed simultaneously with the male issue.

At the same time it should not be understood that the Committee is not unmindful of the position of the widowed daughter-in-law. It considers it necessary that she should look only to her husband's family for support during her widowhood, and the Committee is accordingly recommending that she should be given a right to maintenance. This recommendation will be examined in its proper place.

The Committee having thus resolved to recommend that, in addition to the male issue, the widow and unmarried daughter should also be entitled to succeed simultaneously to the heritable property of an intestate, the next question requiring consideration is about the shares to be allotted to each of them in the property. Section 8 of the 1933 Act, which sets out the shares to be allotted at a partition of joint-family property, affords a test. Under it, each son gets four shares, the mother two shares, and every unmarried daughter one share. A similar provision in regard to heritable property appears to the Committee to be reasonable. It is doubtless true that the logical result of treating daughters whether married or unmarried as equal in all respects to sons and removing

the bar of sex would be to entitle them to share equally with the sons. That is an ideal state of things which, though highly desirable and even necessary, may not attract public approval or acceptance immediately. It is no doubt a state of things to which any progressive society would ultimately tend and reach. But this process has to be a gradual and progressive one and cannot be achieved by a stroke of the pen as it were. The Committee considers that the recognition of the unmarried daughter as a simultaneous heir with the brother is a step in the right direction. The provision regarding the shares at a partition of joint-family property accorded by section 8 has been in existence for over fifteen years and is well understood and could serve as an index to the shares to be now recommended. The Committee therefore recommends that every son should get four shares, sons of predeceased sons and sons of predeceased sons of predeceased sons should take *per stirpes* according to the well understood principle of Hindu Law, that the widow, or where there are more widows than one, all of them should take two shares, and that every unmarried daughter should take one share.

Where two or more widows or two or more daughters succeed simultaneously, it is necessary that they should take as tenants-in-common without rights of survivorship inter se. This has also been indicated in the Bill appended to the report.

The Committee will now pass on to a consideration of certain amendments to Part I of the Act which arise for consideration as a result of judicial decisions thereon so as to improve the language of this Part and clarify the several provisions therein.

The order of succession enumerated in section 4 should apply not only to the estate of a person who is not a member of a coparcenary but also to the separate property of a member of a joint Hindu family. That the separate property of a coparcener goes by succession to his heirs and does not follow the joint family property has been settled law since 1863 according to the judgment of the Privy Council in *Katama Natchiar* v. *The Raja of Sivaganga*, 9 M. I. A. 539. It appears desirable to set this out clearly in the Act, and for this purpose section 4 could be worded more clearly with the addition of one or two definitions in section 2 of the Act. In the draft of the clause relating to this subject, which the

Committee has prepared to supplement its recommendations, this matter has been clearly brought out.

The course which the Committee appointed in 1929 proposed to follow in setting out the order of succession is stated in that Committee's report to be, " to enact a short but comprehensive table of heirs of both sexes within a range of three degrees ", and also " to lay down a few very general rules as to the order of preference among heirs as showing how propinquity may be measured in practice, and to supplement if need be, the arrangement given in the table in its application to relatives beyond the range of three degrees " (p. 80 of the Report). Such a course would of course have been entirely unobjectionable and also free from any kind of vagueness or uncertainty. But the clause as actually drafted, which in this respect is the same as section 4 of the 1933 Act, sets out those heirs only who belong to the family of the propositus [4(1)] and the family of the father of the propositus [4(2)], and then in sub-section (3) states that succession should pass to the family of the paternal grandfather and paternal great grandfather, the members of each family ranking among themselves in the same relative order as members corresponding to them in the family of the father. Next in sub-section (4) the succession is stated to pass to maternal ancestors to the third degree and their respective families, one after the other, and under the same rules *mutatis mutandis* as to relative order within each such family as are applicable to the families of the paternal ancestors. The Committee thinks that, at least in regard to heirs within a range of three degrees, a table of heirs as suggested by the Committee of 1929, is to be preferred to the generalisations set out in sub-sections (3) and (4) of section 4. Such general rules as are contained in these two sub-sections could with advantage be expanded so as to yield a table of heirs and thus avoid uncertainty. The High Court of Mysore which had to consider this section, in *Chiknarasappa* v. *Govindappa*, 48 Mys. H. C. R. 29, has stated that the language used is not happy. The latin expression ' *mutatis mutandis* ' used in sub-section (4) has also not commended itself to the High Court. In respect of the construction of section 8 (1) (*c*) of the Act where too this expression is used, the High Court has stated that it is rather unfortunate that that phrase should have been introduced, and that these words used in that general way do not give any very explicit help in finding how far these principles [*i.e.* of 8(1) (*a*) and 8(1) (*b*)] are applicable or

have to be applied (See *Nagendrasa* v. *Ramakrishnasa*, 46 Mys H. C. R. 503 at 505).

The Committee is of the opinion that the present opportunity of revising the 1933 Act could be availed of to redraft section 4 so as to avoid general rules, at least in regard to heirs within three degrees, and to enumerate the heirs specifically in accordance with the principles set out in sub-sections (3) and (4). This it has accordingly done, and though the table may appear somewhat lengthy, it has the undoubted advantage of placing the matter beyond any doubt. Cases where heirs after the third degree would succeed are likely to be rare; and in such cases the rules of precedence set out in section 5 of the 1933 Act will indicate the preference. But within three degrees a table specifically enumerating the heirs in order will be a great advantage, not only to courts but also to members of the public who are governed by this law. In the Bill appended to this Report this recommendation of the Committee has been implemented. It may also be mentioned that two recent decisions of the High Court, *Channegowda* v. *Channegowda*, (S.A. 294/45-46) which lays down that under section 4 the grandfather's brother's son and the grandfather's brother's son's son inherit together and *Hanumanthappa* v. *Govindappa*, (R.A. 4/45-46) which states that the mother's brother's son and mother's brother's son's son take together, have been followed in preparing the table.

The Committee believes that in the order of succession set out in section 4 certain other changes could also be made with advantage. Succession by half blood is recognised by this section in certain cases but not in others. For instance, the half brother, the half sister, the half sister's son and the father's half brother have been specifically mentioned. If the *mutatis mutandis* rule is applied to the heirs in the family of the paternal gandfather and the paternal great grandfather as well as to the heirs belonging to the family of the maternal ancestors, this half blood will get recognised in respect of heirs in those families corresponding to the heirs of half-blood specifically mentioned with regard to the family of the propositus and the family of the father of the propositus. On the other hand, the half brother's son, the half brother's daughter and the half sister's daughter do not find any place. It appears to the Committee desirable to change the existing order, and to limit the heirs of half blood only to the family of the propositus and that of

his father. To recognise half blood to more remotely connected heirs does not appeal to the Committee, as such recognition would tend to postpone or even defeat other heirs who are connected by fullblood though somewhat more remotely. Therefore, in the order of succession set out by the Committee half blood has been restricted to the family of the propositus and that of his father.

The Committee considers it fair to suggest another amendment. The half brother's son and half brother's son's son should come in after the brother's son and brother's son's son, and the half brother's daughter, the half sister's daughter and the grand children of the half brother and half sister should come in immediately after similar relatives of full-blood.

Yet another change which the Committee considers it desirable to effect in the order of succession is to give the right of simultaneous succession to the brother's daughter and the sister's daughter, and similarly to corresponding relatives in the families of the paternal and maternal ancestors. Such simultaneous succession appears to the Committee to be more equitable.

The Committee also feels that the cases where the brother's son and the brother's son's son and corresponding heirs in the families of the paternal and maternal ancestors take together, should be only those where the father of the brother's son's son or the father of the corresponding heir in the other families is dead. Otherwise, it would be inequitable in effect. A provision to this effect is put in appropriate places of the Bill drafted by the Committee.

The Committee recommends that the changes suggested above should be incorporated in the Act. They have been included in the Bill appended to this report.

Before going away from this subject, the Committee desires to state that the right of simultaneous succession recommended in certain cases for the first time in Mysore and the other slight changes recommended in the order of succession should not affect inheritances which have opened already before these changes become law, and that estates which have vested already should not be divested. The Committee accordingly recommends that the amendments suggested by it to this part of the 1933 Act should apply only to successions to the heritable property of a person who dies after the amendments come into

force, and that legislation which has to be undertaken to implement these recommendations should clearly specify this. limitation

Beyond these changes, the Committee has not departed from section 4 in formulating the table.

Before concluding the consideration of this part of the 1933 Act, it is necessary to examine the provisions of sub-section (6) of section 4 of the Act. This sub-section reads as follows:—

> " (6) Every reference to the son of a female relative in this section shall be read as excluding a son adopted after the death of such female ".
>
> *Illustration*:—A sister's son does not include a son adopted after the sister's death ".

The Committee of 1929 in making this recommendation was evidently influenced by a similar provision in Act II of 1929 which had just then been passed into law in British India. The argument advanced in the Report of that Committee is that it would otherwise be within the power of the husband to make an adoption to himself after his wife's death, and thereby to deflect the regular course of succession away from those having ties of blood and affection with the propositus for the benefit of persons entirely unconnected with him. The Committee was further of opinion that the reasons applicable to a natural son or even a son adopted during the lifetime of such female would not apply to the case of a son adopted after her death.

On the other hand, very weighty reasons have been advanced in *Sundaramma* v. *Venkatasubba Iyer*, I.L.R. 49 Mad. 941, and *Soundarapandiyan* v. *Periaveru Thevan*, I.L.R. 56 Mad. 759 F.B., why the adopted son of a widower should be deemed to be the son of the deceased wife also so as to inherit to her relations in her father's family. These decisions have been criticised in the latest edition of Mayne as trying to impose a fiction upon a fiction. In Mysore, a recent decision in 44 Mys. H.C.R. 339 *Srinivasa Iyengar* v. *Amritavalli Ammal*, illustrates an extreme instance. A wife was abandoned and certain ceremonial rites akin to funeral obsequies were performed to sever connection completely with her. Later, the husband adopted a boy who claimed as the son of the wife so cast away. Distinguishing the Madras decisions, the Mysore High Court held that the boy could not sustain such a claim.

In *Subramanian* v. *Muthia Chettiar*, A.I.R. 1946 Mad. 187, this question again came up for examination

and following the earlier Madras decisions it was held that the adoption by a widower must be given effect to as if the son was taken in adoption in the lifetime of the deceased wife, and that it would divest intermediate estates which had vested before the adoption and subsequent to the death of the wife, either by inheritance or by custom of reverter.

On the one hand, as stressed in the Madras decisions, an adopted son offers oblations to the adoptive father's ancestors as well as to his father's wife's ancestors, and wherever possible, a mother should be found for the boy and the fact that such a mother died before the adoption can be no obstacle in view of the fictitious character of the whole principle of adoption. To give full effect to the fiction of adoption and to assimilate the fact to an imitation of nature, the adopted boy should have a mother. It may be preposterous, as observed in the Mysore case, that one should be allowed to turn round and claim relationship with a person who had been formally discarded; but if in the same case a natural son had been in existence born before or immediately after the wife was discarded, no reference whatever to equitable considerations would have broken up the natural tie between mother and son so as to disentitle the latter, and if an adopted son has to be treated as a natural son for all purposes, the result would have to be the same.

On the other hand, while an adoption by a widow may relate back to her husband's death, there is no reason or principle why it should date back to an earlier date such as the death of the wife. The adoption is to the husband and not to the wife. As the latest edition of Mayne states, " It is imposing a fiction upon a fiction to say, either that the wife must be deemed to be alive at the date of the adoption or that the adoption should relate back to the moment of her death ". The principle that adoption imitates nature is incapable of application in the case of an adoption by a bachelor and, as observed by Varadachariar J. in *Subramanian* v. *Somasundram*, I.L.R. 59 Mad. 1064, " even a fiction cannot be carried to illogical limits ".

In view of these circumstances, the Committee has come to the conclusion that where a widower adopts, any predeceased wife should be deemed to be the step-mother of the adopted son. If the widower had remarried and a son had been born to him, the predeceased wife would be a step-mother, and she should be treated as a step-mother even in regard to an adopted son. The Committee

therefore recommends that sub-section (6) of section 4 may be suitably amended in this behalf, and has accordingly provided in the draft Bill prepared by it and appended to this Report that, where a widower adopts a boy, any predeceased wife shall be deemed to be a step-mother of the adopted boy.

The 1933 Act after providing for the order of succession up to three degrees in section 4, proceeds to set out certain general rules as to the order of preference among heirs more remotely connected with the propositus (section 5). While these rules are in themselves unexceptionable, it appears to the Committee that section 5 is capable of some improvement in its language. The Committee has therefore recast section 5 in what it considers to be more satisfactory language.

While sections 4 and 5 would thus exhaust the list of heirs who are related to the propositus, Hindu Law recognises the right of succession of heirs who are not related to the propositus. In the absence of an heir who is related to the propositus, that is, in the absence of an heir entitled to succeed under section 4 or section 5, the heritable property of a male intestate will devolve upon the preceptor of the propositus, and if there is no preceptor upon the disciple of the propositus, and if there is no disciple upon his fellow student. It appears to the Committee desirable to incorporate these provisions of Hindu Law in the Act itself so as to make the order of succession set out in the Act complete and exhaustive. For this purpose the Committee has incorporated a new clause after section 5. The draft Bill prepared by the Committee and appended to this report includes this clause.

CHAPTER III.

Separate Property and Partition.

Julius Jolly, who was Professor of Sanskrit and Comparative Philology in the University of Wurzburg, Germany, and Tagore Professor of Law in India, has in his Tagore Law lectures, 1883, observed—

> "The vast continent of India may be said to exhibit an epitome of all possible forms of ownership from the corporate property of the village community to the absolutely private property of the individual."

He further observes that the evolution from collective to individual property has been a surprisingly slow process all over the world. In this connection, the following passage from Maine's Ancient Law may also be referred to :—

> "The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. The individual is steadily substituted for the Family, as the unit of which civil laws take account. The advance has been accomplished at varying rates of celerity, and there are societies not absolutely stationary in which the collapse of the ancient organisation can only be perceived by careful study of the phenomena they present".

Joint Hindu family is a very ancient institution in India. Investigation into the customs of different nations has brought to light the existence of the institution of joint-family in very many countries such as Russia, Servia, parts of France down to a very recent date, England until a few centuries ago, and even America. In India, the institution of joint Hindu family takes its origin from the patriarchal family that prevailed in the early stages of Hindu society. In this connection Ramcharan Mitra, in his Tagore Law Lectures, 1895-96, on the Law of Joint property and Partition in British India, has observed,—

> "In the natural order of events, the patriarchal family consisting of the father and his sons and in which the influence of the father (pater familias) was supreme must have preceded the joint-family and the village community. Upon the death of the patriarch or the father, the family consisted of brothers and their sons and when they chose to live together, they lived as a joint-family. The joint family thus became the second stage of living in groups. The eldest of the brothers, as the head of the family, swayed all its affairs; but his influence was very different from that of the father in a patriarchal family. In the infancy of the world, when hunting was a man's chief occupation and his wants

were few, the families naturally grouped together for their own protection from the raids of their neighbours, and hence arose the system of village communities. As time advanced, the individual members of the village communities, *viz.*, the joint families therein comprised, saw that the disadvantages of their combinations outweighed their advantages and began to separate. So again in course of time the practice of living in joint-families has been giving way to the ideas of greater comforts in separate living with greater freedom of action".

It may be interesting to refer here to the probable origin of the joint Hindu family given by K. K. Bhattacharya in his Tagore Law Lectures on the law relating to the joint Hindu family, 1884-85—

"The modern Hindu community is mainly a continuation and expansion of the eight original gotras or patriarchal groups that came over to India from the regions which lie to the north-west of our country across the mountain chain which separates it therefrom. These gotras were absolutely homogenous, excepting probably the slave element, a portion of which element may have accompanied them from their old habitation, but by far the greater number were the aboriginal Dasyus made captive in war. The members of these gotras gradually supplanted the Dasyu race, and in the course of these struggles, themselves divided into a number of class divisions known as castes. When they had given up their nomadic life they settled in agricultural communities characterised by all those attributes which distinguish such groups in other parts of the world. These assemblages known as the 'pugas' or village communities, gradually disappeared, or at least lost all their essential traits, by operation partly of an inherent principle of decay, partly also by the disintegrating effect the Brahmanic religion had upon them. Throughout the whole career of those social groups so originated in the ancient gotras, the principal early traits were never altogether cast off—the supremacy of the oldest, the female exclusion, the ancestor worship, having been either kept in remembrance, or partly followed in practice; while the most characteristic feature of a gotra group, the joint possession of all property, has retained its primitive vitality down to our own days;—the result of this remarkable vitality being the undivided family of the modern law."

The Sanskrit equivalent of the word 'family' is 'kutumba.' Before the migration into India of the eight original gotra founders or patriarchal groups, the Hindu conception of a family or kutumba was very wide as could be seen from the following verse which is often quoted as a proverb in ordinary parlance :—

"ಅಯಂ ನಿಜಃ ಪರೋವೇತಿ ಗಣನಾ ಲಘು ಚೇತಸಾಂ ।
ಉದಾರ ಚರಿತಾನಾಂತು ವಸುಧೈವ ಕುಟುಂಬಕಂ ॥"

अयं निजः परो वेति गणना लघुचेतसां ।
उदारचरितानां तु वसुधैव कुटुम्बकम् ॥

"It is only pettyminded persons who are in the habit of reckoning who is of their kin and who is not; but to those who conduct themselves on generous principles the whole world is of their own 'kutumba'."

The next step in the evolution of the institution of the joint-family was to restrict the notion of Kutumba only to a family composed of persons claiming descent from the eight gotra founders or patriarchs. The further stage reached in the process of evolution was when the society was composed of a number of patriarchal families which, in their own turn after the death of the pater familias, gave rise to the existence of joint-families as already mentioned. In this connection, the following observation of Sir Henry Maine, in his History of Early Institutions as regards the description of joint Hindu family, may be usefully referred to—

"If a Hindu has become the root of a joint undivided family, which is technically said to be joint in food, worship and estate, it is not necessarily separated by his death; his children continue united for legal purposes as a corporate brotherhood; and some definite act of one or more brethren is required to effect a dissolution of the plexus of mutual rights and a partition of the family property. The family thus founded by the continuance of several generations in union is identical in outline with a group very familiar to the students of the older Roman Law, the Agnatic kindred. The Agnates were that assemblage of persons who would have been under the patriarchal authority of some one ancestor, if he had lived long enough to exercise it. The joint family of the Hindus is that assemblage of persons who would have joined in the sacrifices at the funeral of some common ancestor, if he had died in their lifetime."

When society had considerably progressed by the time of Baudhayana, the notion of a joint-family with regard to its constitution was that it was a group of individuals related to one another by their descent from a common ancestor within seven generations from the ascending line. Though, by the time of Manu, there were already traces to show that even the joint-family was on its way to gradual disintegration towards individual property, the institution of joint family has survived even to-day, although it is quite possible that a member of a joint-family may have his own individual property. In order to have a correct notion regarding the number of persons a joint family may be composed of, it may be remembered that while the numerical strength of the family is on the one hand reduced by the marriage of the daughters to other families, it is, on the other hand augmented by the introduction of fresh members who are brought in as

the wives of the males. The unmarried daughters are also the component parts of the family. So too the sons affiliated into the family by adoption become members of the family. Thus in *Ballabdas* v. *Sundardas*, 1887, 1 All. 429, it was said—

> "The joint Hindu family is constituted by the union of descendants by heirship from some common ancestor and there must be connection among its members by blood, relationship, adoption or marriage."

All the principles which regulate the joint-family, determine its membership or its property and regulate the mode of enjoyment or descent of such property, have been more or less well settled by now and, if the subject is at all to be considered by the Committee, it would be only to find out if, according to the terms of the order constituting the Committee, any changes in the accepted principles are called for so as to bring the Hindu Law Women's Rights Act, 1933, in consonance with the spirit of modern times. The Act does not directly deal with the subject of "Joint-family". But, in giving women certain rights to joint family property, the Act has made serious inroads into the conception of the joint family in the Mitakshara schools of law, and it is therefore desirable to shortly state what that conception is.

In the opening paragraphs of this Chapter, the genesis of a joint Hindu family and a general idea of its characteristics have been given. Within that body there is a narrower body termed 'coparcenary'. Members of that body, called 'coparceners', are those who get a vested interest in the coparcenary property by birth, and who are entitled to demand a partition of the coparcenary property. There is a vital difference in the notion of a coparcenary between the Mitakshara and the Dayabhaga schools of law. The Mitakshara conception is based on the idea that, if there is any property inherited by the father from his forefathers, his son obtains therein a vested right as soon as he is born. The word 'son' is used in the wide sense peculiar to that term in Hindu Law to mean three direct descendants in the male line, *i.e.*, son, grandson and great grandson.

"ಪುತ್ರಪದಂ ಪೌತ್ರಪ್ರಪೌತ್ರಯೋರಪ್ಯುಪಲಕ್ಷಣಂ"

The Hindu Law-givers include a grandson and great grandson in the word 'son' because, as observed by Manu in Verse 137 of Chapter IX, they believed that a man conquers

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पुत्रपदं पौत्र प्रपौत्रयोरप्युपलक्षणम् ।

the worlds through a son, obtains immortality through a son's son but gains the world of the Sun through his son's grandson. It can also be ascribed to the fact that everyone of of those three descendants, namely, the son, grandson and great grandson, is entitled to offer the funeral cake to the deceased, and perhaps it is on that account that every one of them obtains by birth an interest in his property, though Vijnaneswara does not put it that way. Under the Dayabhaga Law, the theory that if property is inherited by his father from his forefather, his son, grandson and great grandson obtain therein a vested right by birth is not recognized. That is the radical difference in the conception of a 'coparcenary' between the Mitakshara and the Dayabhaga schools of law. According to the Mitakshara, property is divided into two classes, namely, *Apratibandha Daya* or unobstructed heritage, and *Sapratibandha Daya* or obstructed heritage. In this connection, Vijnaneswara says :—

" ಸಚದ್ವಿವಿಧಃ ಅಪ್ರತಿಬಂಧಃ ಸಪ್ರತಿಬಂಧಶ್ಚ ।
ತತ್ರಪುತ್ರಾಣಾಂ ಪೌತ್ರಾಣಾಂಚ ಪುತ್ರತ್ವೇನ ಪೌತ್ರತ್ವೇನಚ ಪಿತೃಧನಂ ಪಿತಾಮಹಧನಂ ಚ ಸ್ವಂ ಭವತೀತ್ಯ ಪ್ರತಿ ಬಂಧೋದಾಯಃ ।
ಪಿತೃವ್ಯ ಭ್ರಾತ್ರಾದೀನಾಂತು ಪುತ್ರಾಭಾವೇ ಸ್ವಾಮ್ಯಭಾವೇಚ ಸ್ವಂ ಭವತೀತಿ ಸಪ್ರತಿ ಬಂಧೋದಾಯಃ ।
ಏವಂ ತತ್ಪುತ್ರಾದಿಷ್ವಪೂ್ಯಹನೀಯಃ । "

"It is of two sorts : unobstructed (Apratibandha) or liable to obstruction (Sapratibandha). Now, the wealth of the father and of the paternal grandfather becomes the property of his sons and of his grandsons in right of their being his sons and grandsons respectively, and that is an inheritance not liable to obstruction. But property devolves on paternal uncles, brothers and the rest upon the death of the owner and in default of male issue : and thus the existence of a son and the existence of the owner are impediments to succession ; and, on their ceasing, the property devolves (on the successor) in right of his being uncle or brother. This is inheritance subject to obstruction. The same should be inferred in respect of their sons and the rest ".

Unobstructed heritage is not recognized by Jeemutavahana according to whom all heritage is obstructed, and

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सचद्विविधः अप्रतिबन्धः सप्रतिबन्धश्च । तत्र पुत्राणां पौत्राणां च पुत्रत्वेन पौत्रत्वेनच पितृधनं पितामहधनंच स्वं भवतीत्यप्रतिबन्धो दायः । पितृव्यभ्रात्रादीनांतु पुत्राभावे स्वाम्यभावेच स्वं भवतीति सप्रतिबन्धो दायः । एवं तत्पुत्रादिष्वप्यूहनीयः ॥

[Vijnaneswara]

no person takes an interest by birth in the property of another. For his view Vijnaneswara receives support from the following text of Gautama :

" From the very moment of birth, one obtains the ownership of the wealth—thus say the authorities ".

On the other hand, Jeemutavahana, in support of his position, relies on the following text of Devala :—

"The father being dead, the sons should divide the father's wealth ; since there cannot be ownership in them while the father is living being faultless ".

What led to the cleavage between Vijnaneswara and Jeemutavahana in respect of this matter can easily be explained if we remember what Mitra Misra, in his Vira Mitrodaya says :—

" The smriti texts relating to law are but the repetitions of what prevails among the people ; this has been so said by all the writers of treatises ".

It is therefore likely that Vijnaneswara laid down the law of equality between the father and the son as he found it prevailing among the people for whom he wrote while, on the other hand, Jeemutavahana gave prominence to the notions current in Bengal. Each of them gave prominence to the particular Rishi text which favoured his own special view. However, it must be said that there is the following text of Yajnavalkya which considerably strengthened the hands of Vijnaneswara in propounding his view—

" ಭೂರ್ಯಾ ಪಿತಾಮಹೋಪಾತ್ತಾ ನಿಬಂಧೋದ್ರವ್ಯಮೇವವಾ ।
ತತ್ರಸ್ಯಾತ್ ಸದೃಶಂ ಸ್ವಾಮ್ಯಂ ಪಿತುಃ ಪುತ್ರಸ್ಯಚೋಭಯೋ ಃ ॥ "

" The ownership of both father and son is the same in land, a corrody, or wealth received from the grandfather."

The essence of coparcenary under the Mitakshara Law is unity of ownership (Samudayika Swatwa) which is otherwise known as " aggregate ownership ". The doctrine of unity of ownership has been clearly set forth in the Privy Council case of *Appovier* v. *Ramsubba Aiyan*, 11 M.I.A. 75 as follows :—

" According to the true notion of an undivided family in Hindu Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that

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भूर्या पितामहोपात्ता निबन्धो द्रव्यमेववा ।
तत्रस्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः ॥
[Yajnavalkya]

he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or receiver of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment of the members of the undivided family."

As a necessary deduction from the theory of 'aggregate ownership' prevailing in the Mitakshara School, is the rule of survivorship which should govern the devolution of coparcenary property as between the coparceners. As observed by Lord Justice Turner in *Katama Natchiar* v. *Raja of Shivaganga*, 9 M.I.A. 543 at 615—"According to the principles of Hindu Law, there is coparcenarship between the different members of a united family and survivorship following upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession."

Before closing this branch of the subject relating to a coparcenary according to the Mitakshara Law, it may be useful to refer to the following passage from Mayne's Hindu Law and Usage:—

"The question in each case will be, who are the persons who have taken an interest in the property by birth? The answer will be, that they are the persons who offer the funeral cakes to the owner of the property, that is to say, the three generations next to the owner in unbroken male descent. Therefore, if a man has living sons, grandsons and great-grandsons, all of these constitute a single coparcenary with himself. Every one of these descendants is entitled to offer the funeral cake to him and therefore every one of them obtains by birth an interest in his property. But the son of one of the great grandsons would not offer the cake to him, and therefore is out of the coparcenary so long as the common ancestor is alive. But while fresh links are continually being added to the chain of descendants by birth, so earlier links are being constantly removed from the upper end of the chain by death. So long as the principle of survivorship continues to operate, the right to the property will devolve from those who are higher in the line to those who are lower down. As each fresh member takes a share, his descendants to the third generation below may take an interest in the share by birth. So the coparcenary may go on widening and extending, until its members may include persons who are removed by indefinite distances from the common ancestor. But this is always subject to the condition that no person who claims to take a share is more than three steps removed from a direct ascendant who has taken a share. Whenever a break of more than three degrees

occurs between any holder of property and the person who claims to take next after that holder, the line ceases in that direction and the survivorship is confined to those collaterals and descendants who are within the limits of three degrees."

The essence of coparcenary under the Dayabhaga Law is not 'unity of ownership' but is 'unity of possession,' every coparcener taking a defined share in the property and being the owner of that share. It is fractional ownership (Pradesika Swatwa). The doctrine of survivorship being totally inconsistent with the principle of fractional ownership, the share of each coparcener under the Dayabhaga Law will, on his death, pass to his heirs and not to his coparceners by survivorship. Another distinguishing feature between the Dayabhaga and Mitakshara Laws is that, while a coparcenary under the Dayabhaga Law may consist of males as well as females, under the Mitakshara Law no female can be a coparcener.

As regards what constitutes joint-family or coparcenary property under the Mitakshara Law, it is settled that property which a man inherits from a direct male ancestor not exceeding three degrees higher than himself known as ancestral property, savings out of ancestral property, purchases made from such savings or from sale of ancestral property, property jointly acquired by persons constituting the joint Hindu family by their joint labour and with the aid of joint family property, property though originally self-acquired which is voluntarily thrown into the joint stock, all form joint family property. As regards property acquired by persons constituting a joint Hindu family by their joint labour but without the aid of joint-family property, it is now well settled that such property must be presumed to be joint family property, unless the acquirers intended to hold the property as co-owners between themselves in which case it would be their joint property. As regards gains of science, the Hindu texts classed such gains as joint family property if the knowledge of science was acquired at the expense of joint family funds, and courts interpreted the word 'science' to mean 'special' as distinguished from 'ordinary learning.' Courts of law therefore held that income earned by a member of a joint family by the practice of a profession or occupation requiring special training was joint-family property, if such training was imparted at the expense of joint-family property; and that gains made by personal labour and without the aid of joint-family

funds by a member of a joint-family, who was maintained out of joint-family funds and received no more than an ordinary education suitable to his position as a member of the family, were the self-acquired property of such member.

Coupled with the right by birth in a joint-family, every coparcener has also a right to demand or sue for partition, and every coparcener is entitled to a share on such partition. But as women, who are members of the joint-family though not of the coparcenary, were entitled to be maintained by the family and this right was interfered with by partition, certain women of the family were given certain shares under the Hindu Law texts at such a partition. Those rules allowing a share to women, however, became obsolete in South India long ago.

This in short is an account of the coparcenary and its incidents. It is, however, sufficient to indicate that a coparcenary under the Mitakshara Law, so far as its members are concerned, is limited to its male members and while certain women have rights to maintenance, they have under the Mitakshara Law no interest in joint-family property. It is, also clear that, at any division of such property amongst the coparceners, women in South India were not allowed to participate. Where a person had earned a large estate by his own skill, and that was regarded by law as joint-family property under the circumstances mentioned above, that estate would not be available for the women of his family like his wife or daughter but would go into the common stock. That was the state of affairs in Mysore before the appointment of the Committee in 1929. That Committee, after a detailed examination of the law relating to the joint-family, made two important recommendations. One was that property acquired by a coparcener by his own exertion, skill or learning should be deemed to be separate property, even though he might have received training or education at the expense of the family. The second recommendation was that certain women of the family should receive shares at a partition of the joint-family property among the coparceners. These amendments have been implemented in the 1933 Act by sections 6 and 8.

The Committee does not feel called upon, in the light of its terms of reference, to go into the entire question of the law relating to the joint-family. The 1933 Act does

not do so, and the Committee understands its functions to be limited to the provisions of law embodied in the Act and to suggest amendments therein, which will resolve difficulties felt in its interpretation or which would bring the Act in consonance with the spirit of modern times. No doubt, there has sprung up a body of opinion in the Provinces in India which would seek to do away with the Mitakshara conception of joint-family altogether and introduce the Dayabhaga Law throughout India. The Bill which has been drafted recently in India to codify Hindu Law seeks to give effect to this view. On the main ground that such a Code will tend to render the law uniform throughout India, and on the ground that it is unreasonable that a person's earnings should go to enrich, not his own close relatives like a wife or daughter but distant coparceners, and with the intention of doing away with the existing complications in regard to the law of alienations and debts, the system of the Dayabhaga has been preferred by some to the Mitakshara. They would abolish the notion of survivorship and right by birth. This would doubtless simplify the law and secure also uniformity throughout India.

On the other hand, it may be dangerous to change the law which has been in existence over centuries and is well understood in its working on the mere ground that it secures uniformity. India is a vast country and similar areas in the West having different Governments do not have any uniform set of laws, whether in matters governed by personal law or by the *lex loci*, and the advocates of uniformity may not be doing any service by changing well-understood principles of law only on that ground. Moreover, this argument is of no value in Mysore which has only one set of laws, namely, the Mitakshara. On merits also, it is not clear if the whole body of informed opinion in Mitakshara jurisdictions, or even a large proportion of it, is in favour of a change over to the Dayabhaga. Even in the conditions of life which obtain to-day, the joint-family system is not perhaps as useless or such a hindrance to progress as would be made out by some persons. It is a system under which the entire body of Hindus have been cherished and brought up for centuries and it has been responsible for the cultivation of many virtues. The protection it has afforded to the infirm, orphaned or otherwise backward members of the family is not a matter to be ignored. Many of the duties and responsibilities now cast upon the State were the duties once discharged

by the joint-family. Golapchandra Sarcar Sastry, an eminent writer on Hindu Law, says that the very "vitality of the Hindu community is derived from this system which forms the foundation of their religious and spiritual character, the existence of which depends entirely on its continuance. What is noble and good in Hindu character is its effect" (Hindu Law—VI Edition, p. 292). It may be added that, in several countries in the West, the view that a man's dealings with his own property should be limited to a certain extent so as to secure some minimum provision for his family is not a doctrine which is looked upon with disfavour, but on the other hand appears to be gaining ground. Section 33 of the Family Protection Act of New Zealand under which if a person dies leaving a will and without making adequate provision for his wife, husband or children, the court may in its discretion order that such provision as the court thinks fit shall be made out of such estate for such wife, husband or children is an example of this shade of opinion, and it is stated that this section has proved successful in practice. The notion of a joint-family, it may be safely stated, is founded on similar principles of safeguarding the interests of the family. The abolition of this notion of the joint-family may be a step in the opposite direction, giving as it does every person the fullest freedom of disposition and waste. As long, therefore, as there is no limitation upon a person's right to waste or squander away his property leaving his family destitute, the joint-family is the only answer and remedy. Finally, it is always open to a person who wants to get out of the joint-family and cease to be subject to its laws to do so by a mere declaration of intention to separate. Thereafter, he will cease to be a coparcener and his property will devolve by succession to his heirs. Thus the joint-family is not one which will bind a person against his desires, but will be applicable only to one who desires to share joys and sorrows as well as property with his kinsmen.

The Committee should not be understood as being against reform. As the law stood before the 1933 Act, there was no doubt that the joint-family worked as a considerable hardship upon women. Sex was literally a bar to property rights. Very near relatives of a deceased coparcener like his own wife or daughter could not, by reason of sex, acquire any rights to his property and had to depend on other coparceners for their maintenance and upkeep. The law relating to the joint-family did therefore

require to be amended to suit modern conditions. It is a very different matter, however, to assert that the entire scheme of the joint-family should be scrapped, and that a system like the Dayabhaga, quite foreign to Hindus steeped in Mitakshara doctrines, should be imposed on them. The 1933 Act has gone a very long way in resolving these difficulties. It has freed from the stamp of joint-family property, all property acquired by a person's skill or exertions, and after the Act such property has become heritable property and passes to his heirs by succession. It has given all the women of a coparcener's family rights in his share of the coparcenary property. With these two changes, it may perhaps be justifiably asserted that the law relating to the joint-family has once again been related to the needs of society. The opinion of the present Committee is therefore against the total abolition of the joint-family system.

While the 1933 Act has thus made necessary changes in the conception of the joint-family and certain women are for the first time given shares in such property, there is one respect in which the Act could be improved. It has been laid down on an interpretation of the relevant provisions of the Act that though certain women are given shares at a partition, they have no right to demand such partition, except where property vests in a sole surviving coparcener, and that they must wait for a partition, partial or complete, among the coparceners before they can get their shares. In *Venkatapathia* v. *Saraswathiamma*, 43 Mys. H.C.R. 361, the joint-family consisted of a father, a son and a grandson. The widow of a deceased son filed a suit for maintenance and later was permitted to amend the plaint by the introduction of a prayer for partition and delivery of her share of the joint-family property. After a detailed examination of the several provisions of the 1933 Act, the High Court held that as there was no partition between the coparceners who remained undivided, the plaintiff had no right to a share in the property of the joint-family. In this case the defendants, that is to say, three male members of the coparcenary, stated that they did not wish to be divided from each other nor had they any such intention to do so, and thus effectively prevented a woman entitled to a share in the property from getting it.

On the other hand in *Dakshinamurthy* v. *Subbamma*, 45 Mys. H.C.R. 102, the widow of a deceased coparcener sued her husband's brother who, on her husband's death,

became the sole surviving coparcener, for her share of the property. It was held on a construction of section 8 of the 1933 Act that in such a case, the woman had a right, from the moment her husband died and the defendant became sole coparcener, to a separation of her share and the possession of it. A distinction was thus drawn between the case of a coparcenary consisting of a number of members and one in which the coparcenary had dwindled down to a sole coparcener.

Finally, in a recent case which was decided by a Full Bench of the High Court, *Subbia* v. *Komariah*, R. A. 32/44-45, it was decided that in order to entitle women having shares in joint-family property to have their shares separated off and placed in their possession, the partition between the coparceners need not be a complete partition but that the women got this right even where there was a partial partition, that is to say, even in a case where one or more coparceners separated themselves, the others remaining undivided.

The Committee is of the opinion that all those women who are given shares at a partition of joint-family property, should also be given a right to demand the separation of their share and to have it placed in their possession. It is no doubt true that the notion, that some persons who were entitled to a share at a partition could not themselves sue for it, is not unknown to the Hindu Law. But having given women for the first time shares in joint-family property, it is logical to follow it up by giving them also the right to have their shares made available to them. The decision in 43 Mys. H.C.R. 361 noticed above shows how coparceners by refusing to go to partition can effectively stand in the way of a woman benefiting by the rights conferred on her by the 1933 Act. If analogy were needed, reference could be made to the Hindu Women's Rights to Property Act, 1937, in force in the Provinces of India under which the widow who is given her husband's rights in joint-family property is also given "the same right to demand partition as a male member." By so giving them the right in all cases, the present anomalous position under which the right is available as against a sole coparcener but not where the coparcenary consists of more than one coparcener would be set right, and the right of a woman would become a substantive right instead of one contingent on a partition. The Committte therefore recommends that such a right of partition should be specifically given to them by statute.

An unmarried daughter, being one of the women who has a right to a share in joint-family property, the result of this recommendation would be to give her also a right to demand portion of her share. Proviso (ii) to section 8, however, denies her this right. Whether an unmarried daughter should be treated differently from other women in this respect or given the right to demand a partition even against her father, is a question on which the Committee has bestowed very careful thought. Proviso (ii) to section 8 is in the following terms—"No female whose husband or father is alive shall be entitled to demand a partition as against such husband or father as the case may be." As long as it was held, on an interpretation of the language of the Act, that no woman whatever who was given a share in joint-family property had a right to demand or sue for partition, this proviso was not of much value or importance. But now that the Committee is recommending that such a right should be given to them, the question arises whether this proviso (ii) to section 8 should continue to deny this right to an unmarried daughter, even though it is conceded in all other cases.

The reference to a husband in this proviso is evidently a mistake as section 8 does not give any woman who has a husband alive any share in joint-family property. The judgment in 43 Mys. H.C.R 361, where an interpretation is sought to be put upon this proviso so as to make the reference to a husband intelligible, appears to proceed upon a slight misconception. In that case the coparcenary consisted of a father, a son and a grandson. The judgment states that if the son decided to divide himself from his father and his son, the combined effects of section 8 (1) (*a*) and 8(1) (*c*) would entitle his mother to a share in the property. But such a partition being in effect the partition between a man and his lineal male descendants, really fell directly within the purview of section 8 (1) (*a*) and the mother of the son, *i. e.*, the wife of the father would not be entitled to a share at all. In any case the observation was unnecessary for the decision in that case and was by way of obiter. Whatever may be the position in regard to a wife, there is no doubt that an unmarried daughter under the law as laid down in the 1933 Act cannot demand or sue for partition against her father. A recent judgment of a Full Bench of the High Court in *Subbiah* v. *Komariah*, R. A. 32/41-45 (not yet reported), while agreeing that she cannot demand her share against her father's will has, however, held that "it may be that

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they (unmarried daughters) could not demand their shares against their father, but it is open to the court when effecting a partition at the instance of the other male members of the family to give them their shares."

It cannot be said that the present state of the law in regard to the right of a woman to demand a partition is satisfactory. In the first place, a woman has no such right against a coparcenary though she will get a share at a partition, whether all the members or some of them only divide (See the Full Bench decision in R. A. 32/44-45 which says even a partial partition will entitle women to claim their shares). Where, however, the coparcenary has dwindled down to a sole coparcener, all women entitled to shares get a right to demand and sue for their shares (this is the interpretation put upon section 8 in 45 Mys. H. C. R. 102). In the case of an unmarried daughter, however, she has in no case a right to demand a share against her father's will. However a court can give her such a share if the matter comes up before the court at the instance of a male member seeking partition (R. A. 32/44-45).

The present recommendation of the Committee that all women entitled to shares would also be given the right to demand partition will resolve many of the difficulties. In the case of the unmarried daughter also, such a right appears to be a necessary adjunct to her right to a share. It has to be remembered that this right to a share is not a right by birth. Nor is it a charge upon the joint-family property. It arises for the first time when there is a demand for partition and will be a share of the joint-family property in existence on the date of such demand. No share can be claimed in property of the joint-family alienated away before that date. It would be very inequitable if a share is given by the law which could be defeated at the wish of a male member, even though he be father, and the woman thus deprived of what the law gives her. When all other women are given the right to demand their shares, there is no reason why an unmarried daughter should be denied this right. For instance, a sole coparcener may have an unmarried daughter, a son's widow and an unmarried sister. The latter two could demand a partition and safeguard their shares. Whereas, if she is not given a similar right, an unmarried daughter will have to look up to her father's wishes before her share is made available to her; and even if the entire property including her share also is

being wasted away or alienated, she has to look on helplessly and without any remedy. It does not appear to be fair that while a remoter relative like a widowed daughter-in-law or grand-daughter-in-law or unmarried sister can safeguard their shares in a man's property, his own daughter cannot do so. The Committee could not also ignore cases where the presence of a step-mother rendered the conferment of such a right a matter of great importance to an unmarried daughter by a predeceased wife.

It may be argued perhaps that it is undesirable that an unmarried daughter should be allowed to walk out of the family with a share of the property and that it would give room for unscrupulous persons to take advantage of such a position. It is an argument that is available against the grant of such a right to an unmarried sister, and with greater reason, because she may have no father or mother. It is an argument that has been effectively silenced by the grant of rights to property to women and the acceptance of the principle of equality of sex. There is also no reason why an unmarried daughter should not claim and get her share separated off, but still allow her father to manage her property for her. Once a share is given to her, it must be made available to her without depending on the wishes of a third party. The Committee does not consider that the conferment of this right will either disrupt the family or result in loss of affection or loosen family ties. On the other hand, it appears to it that the grant of this right, enabling her share to be safeguarded from the fluctuating fortunes of the family, is a logical corrollary to the grant of a share in the property. The Committee therefore recommends that this right to demand or sue for partition should be available to all women who are given shares under section 8, including an unmarried daughter.

The Committee is also of the opinion that all the women, who on the date the amendment now proposed by it becomes law had the right to a share in joint-family property on partition, should get the right to demand a partition, in other words, that the right now proposed to be given to demand partition should become available as soon as the 1933 Act is amended. Any further postponement of the right is not necessary, nor will the conferment of the right immediately result in any hardship.

In this part of the 1933 Act, sections 6 to 8 deal with joint-family and section 9 with adoption. Before passing on to a consideration of the section relating to adoption,

changes of a drafting nature in sections 6 to 8 require to be considered. In regard to section 7, the question has been raised in a case whether the use of the word 'member' has any special significance, particularly as the word 'coparcener' has been used in section 8. In 43 Mys. H.C.R. 361, it was observed that if section 7 merely dealt with and provided for coparceners becoming divided in interest or by declaration, it was merely a restatement of the existing law, and it was rather surprising that the Legislature should have thought it necessary to introduce such a restatement of the law in this Act because the Act purports to be an amending Act and such a provision would effect no amendment of the law as declared in the State. But as it was not necessary for that case, the court did not come to any decision about the scope of the term 'member'. The Committee which was appointed in 1929, in drafting the clause which finally emerged as this section 7, states in its report that the clause was put in merely "to declare in clear and general terms the law as it stands in respect of unilateral separations for the reason that the law is not as well-known as it should be, and because it is a point which has a material bearing upon the rights of a coparcener's wife, daughters and other female relatives" (page 102 of that report). Whatever may be the objections to the introduction of provisions which are restatements of the law, in an amending Act it is clear that, in respect of section 7, nothing more was intended than such bare restatement. The word 'member' therefore clearly means only a 'coparcener'. Now that the 1933 Act is under examination and revision, this amendment could be effected without any difficulty. In section 6 also the word 'member' is evidently used only to mean a 'coparcener'. The claim of jointness negatived by this section can only be of a coparcener and not of any member. Even in this section the word 'member' has to be changed to 'coparcener'. The Committee has therefore recommended in the draft Bill prepared by it that in section 6 as well as section 7, the word 'member' may be substituted by the word 'coparcener'.

Coming to section 8, it may be stated at the outset that it is one of the sections of the 1933 Act which has come up for considerable examination by the courts and several Judges have remarked that the language of the section leaves much to be desired and that consequently the interpretation of this section is attended with much difficulty. This section has had an unfortunate history.

In drafting the clause which finally became section 8, the Committee appointed in 1929 observed, " It may perhaps be mentioned that no portion of the Bill has entailed as much trouble in the drafting as this clause or required greater care " (p. 111). The real trouble was that, though this clause occurs in that part of the Report which deals with joint-family, the intention appears to have been to make it apply to all property whether joint-family property or self-acquired property. The resulting confusion has been examined in Chapter II of the present Report in some detail. However, when the Bill was before the Legislative Council, this clause was understood by that House as well as by the Select Committee of that House which was appointed to consider the Bill, to relate solely to joint-family property and was amended accordingly. But some of the provisions of the original clause, for instance, the first proviso to this clause which obviously relates, as it can only relate, to self-acquired properties, were allowed to remain in the amended clause and have been responsible, in part, for the difficulties in interpreting this section.

In addition to this inconsistency, there is no doubt that the language of the section is itself capable of improvement and consequent clarification. The existing section is not clear. The difficulty in ascertaining its proper meaning and scope has been referred to in more than one decision (See particularly 43 Mys. H.C.R. 361, 45 Mys. H.C.R. 102, 46 Mys. H.C.R. 503, 50 Mys. H.C.R. 171). The difficulty in interpretation arises by reason of the form in which section 8 is couched. While the women entitled to a share in cases where the coparcenary consists of a man and his lineal male descendants [8(1)(*a*)] or brothers [8(1)(*b*)] have been specifically enumerated, it has been left vague in all other cases. Sub-section 8(1)(*c*) which relates to a coparcenary other than the two cases mentioned above merely lays down that, in the case of a partition among " other coparceners in a joint-family," sub-sections 8(1)(*a*) and 8(1)(*b*) will apply *mutatis mutandis*. Then sub-section 8(1)(*d*) which relates to the case of a sole surviving coparcener states that shares of the " classes of females enumerated in the above sub-sections" will be safeguarded to them in such a case. The ascertainment of the classes of women who would be entitled to shares when the coparcenary which goes to partition is other than that of a man and his lineal male descendants or brothers, or

where the coparcenary consists of, or to put it more correctly has dwindled down to, one coparcener is therefore attended with great difficulty and is far from clear. The Committee thinks that it will be impossible to proceed on the basis of the nature of the coparcenary and then to ascertain the women of that joint-family who will be entitled to shares. Coparcenaries can exist in several ways. Members differently related to one another may form the coparcenary. It is a fluctuating body and while it may be easy to ascertain at any particular time who form the coparcenary, it will be impossible to expect the membership of the coparcenary to continue unchanged. There is thus no limit to the manner in which a coparcenary can exist, or about the relationship of the coparceners, one to another. To expect, therefore, a section which would exhaust all possible ways in which a coparcenary could be in existence, is to expect the impossible.

Now that women who are given shares are also recommended to be given a right to demand partition, the Committee feels that the section could be re-drafted so as to enumerate specifically the women themselves who would be entitled to shares and to demand a partition, instead of referring to the nature of the coparcenary. As long as they did not have a right to demand partition, reference had perhaps to be made to the partition itself at which they could participate. There is no such need now and it would thus be possible to improve the language of section 8, to simplify it and render it easy of interpretation. There is no doubt that these women, who are entitled to shares, would depend for such shares on their relationship to a coparcener. But a few simple rules to determine such relationship, dividing a coparcenary into just 3 classes, firstly where it consists of a person and his lineal male descendants, secondly all other cases of coparcenary, and thirdly the case of a sole coparcener, would serve the purpose. The Committee has therefore re-drafted the section on the above lines and included it in the Bill appended to this report. It may be mentioned that care has been taken to include only those women who are now entitled to shares. Provision has also been made in the clause to grant all of them the right to demand a partition.

In the clause as so re-drafted a few points require special notice. Under the existing section 8 the widowed mother of every coparcener will be entitled to a share, except where a coparcenary consists of a man and his

lineal male descendants, in which case the widow of a son (son here including stepson, grandson and great-grandson) who has left male issue will not be entitled to a share (See 46 Mys. M.C.R. 503). While the exception in the case of a widow of a son or a grandson who has left male issue is understandable, because such male issue would be entitled under the doctrine of representation to take his father's or grandfather's place in the partition, and the widow as mother or grandmother can look up to that share in the hands of the son or grandson for her share (except when such son or grandson has no such descendants), the rule will be lacking in reason if we consider the case of the widow of a great-grandson. The male issue of such great-grandson will not be entitled to share in the partition, being more than three degrees removed from the person who is dividing from his descendants. In other words, that branch of the family to which the widow belongs will not participate in the division of property. Similarly, the widow of a son or the widow of a grandson should not be refused a share, if the male issue of such son or grandson is one more than three degrees removed from the person dividing from his descendants and thus not participating in the partition. The definition of 'son' in this context, in sub-section 8(3), has therefore to be limited in the manner abovementioned.

Further, it has been held in 45 Mys. H.C.R. 460 that the existence of male issue as a bar to a widow sharing, should be existence on the date of partition and not on the date of death of the widow's husband. That there was a male issue in existence some time and had died before the date of partition, will not be a bar to her claiming or getting a share. Similarly, the widow of a coparcener or the unmarried daughter of a deceased coparcener should be denied a share, only where that coparcener has left a lineal male descendant who would have been a coparcener if in existence on the date of partition. Any other lineal male descendant who does not participate in the partition or share in the property of the joint-family should not, by his mere existence, stand in the way of the woman's rights. In the clause as drafted by the Committee these points have been clarified. It is also made clear that the material date when the existence of certain lineal male descendants disentitle a woman to claim a share, should be the date on which she expresses an intention to divide. The provisions of section 7, which relate to an unilateral expression of intention to divide, are thus applied

to the case of a woman also who wishes to separate herself away from the family.

The Committee is also of the opinion that such a separation of the share of a woman should not disrupt the family, and the other members should be presumed to continue to be joint notwithstanding the woman getting her share separated. Where a coparcener so divides from the coparcenary, the law in the Provinces of India as well as in Mysore is that the question whether the other coparceners should be presumed to continue to be joint or separated is one of intention of parties which must be proved (A.I.R. 1931 P.C. 154 and in Mysore R.A. 32-1944-45). It appears desirable therefore that there should be a specific provision in the Act to provide that, where a woman separates her share, the others should be presumed to be joint instead of leaving it to be inferred by act of parties as one of intention. The clause drafted by the Committee incorporates such a provision.

The existing sub-section 8(2) states that the share of a woman shall be fixed in relation to the share of a husband, son or brother, as the case may be, which he would have got if he were alive. Sub-section 8(4) states that the male relative should be treated as receiving one share, fractional shares being allotted therefrom to his female relatives. An illustration has also been appended to the section showing how these shares should be worked out. In interpreting these provisions in 50 Mys. H.C.R. 171, Venkataramana Rao, C. J. observed, "On a careful reading of these provisions it is clear that the share which a widow, mother or daughter or sister gets has to be fixed with reference to the share of the husband, father or brother as the case may be, that in fixing their share, if the coparcener with reference to whose share the share of his female relatives will have to be fixed was not alive at the date of the partition, he must be treated as being alive and allotted his legitimate share, and from and out of the said share the fractional shares to which the said relatives will be entitled must be allotted and given" (p. 172). Later in the same judgment he states, "The illustration deals only with sharers in the first generation whereas in the present case we have to deal with persons who are also of the second generation. In such cases, the share of the coparcener in the first generation if he were alive must first be ascertained before the sharers in the second generation who claim through him are given their appropriate shares according to the provisions of the Act" (p. 173).

In the light of this decision it, appears necessary to re-draft sub-sections 8(2) and 8(4). The illustration also appears to be unnecessary as it deals only with one instance and a simple one at that. The draft proposed by the Committee incorporates two changes, firstly by re-drafting sub-section 8(4), and secondly by omitting the illustration altogether.

The Committee hopes that in the provisions as now drafted by it, many of the doubts and difficulties experienced with respect to section 8 have been resolved and removed, and that they give a clear and simple but comprehensive statement of the law on this subject.

CHAPTER IV.

ADOPTION.

No branch of the Hindu Law has had such chequered history in the courts of law as the law of adoption. In spite of the fact that the adopted son even in early times attracted great attention and attained prominence and has been dealt with in the Smritis and Commentaries, and that special treatises dealing with adoption like the Dattaka Mimamsa and the Dattaka Chandrika came to be written on the subject and have been accepted as bearing high authority, it has nevertheless happened that cases uncovered by such authority have constantly come up before the courts. Even where these texts treat of a particular subject, the question whether the precepts are meant to appeal to the moral sense instead of laying down an inflexible rule of law had to be examined before applying them. The prohibition of adoption of an only son is a case in point. Generally speaking, it may be said that in respect of adoption, at any rate on matters which attract the attention of the courts most, namely, those relating to the incidents of adoption like the devolution of property as a result thereof, the law in force is mainly, if not entirely, judge made (See the observations of Oldfield J. in *Veeranna* v. *Sayamma*, I.L.R. 52 Mad. 396). Unfortunately, these decisions of courts have not always tended to secure uniformity in the law. The whole subject being based on the fiction of relating an adopted son as nearly as may be to the position and status of a natural born son, courts have proceeded on grounds of natural justice and equity with the result that decisions have depended mainly on the facts of the case before them, and it has been difficult to deduce any single intelligible principle which would apply to all decisions on that particular subject. The existence of different schools has added to the confusion.

The Committee would have normally hesitated to embark on any general examination of this branch of Hindu Law, because of the limited terms of reference to it. But section 9 of the Act of 1933 has laid down provisions of law in regard to a widow's power to adopt, as well as the effect of adoption made by a widow upon her rights to property. It has therefore become necessary for the Committee to address itself to these branches of the law of

adoption and to examine in some detail if, and in what manner, changes are called for in the Act in this respect. Certain recent decisions of the Privy Council have also profoundly modified and, it may be added, simplified the law and has placed it on a logical and understandable basis.

While, therefore, the Committee is not called upon by the terms of reference to make any detailed examination of the entire branch of the law relating to adoption or to make recommendations in respect thereof, the Committee feels that it has to examine certain topics which are affected by and in turn affect the provisions of the 1933 Act.

The first of these topics is as regards a widow's power to adopt. With respect to the capacity of a woman to adopt Vasishta and Baudhayana ordained :—

" ನಸ್ತ್ರೀ ಪುತ್ರಂ ದದ್ಯಾತ್ ಪರಿಗೃಹ್ಣೀಯಾತ್
ವಾ ಅನ್ಯತ್ರಾನುಜ್ಞಾನಾತ್ ಭರ್ತುಃ । "

" Let a woman neither give nor receive a son except with her husband's permission."

The interpretation of this text in different ways by the Commentators, whose authority has been accepted in different schools of law, has given rise to variance in the law on the point in the different schools. In the Mithila school of law in which Vivada Chintamani of Vachaspati Misra is the leading authority, a widow cannot adopt at all even though she has the express authority of her husband, inasmuch as the assent of the husband must be given at the time of the adoption. Vachaspati Misra explains the above mentioned text of Vasishta and Baudhayana, as intending that she may be allowed by her husband to associate with him in the act of adopting a son. In the Bengal and Benares schools of law the said text is interpreted as requiring the authority from the husband given to his wife during his lifetime, but capable of taking effect after his death. According to these schools, it is only the authority given by the husband that can enable his widow to adopt after his death, and if there is no such authority she cannot adopt at all. In the Madras school of law it was held by the

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नस्त्री पुत्रं दद्यात् परिगृह्णीयात् वा
अन्यत्रानुज्ञानात् भर्तुः ॥

[Vasishta and Baudhayana]

Privy Council in the *Ramnad case*, 12 M. I. A. 397, that a Hindu widow not having her husband's permission may, if duly authorised by his kindred, adopt a son to him. Prior to the 1933 Act, the same principle applied in Mysore also. The principle underlying the law on the point prevailing in the Madras Presidency, appears to be that the word 'ಭರ್ತುಃ' (of the husband) in the text of Vasishta and Baudhayana is merely illustrative and means the guardians of the widow for the time being, in other words, her husband's sapindas. It proceeds on the principle that a woman is under perpetual tutelage. That view receives support from Mitra Misra, the author of Vira Mitrodaya, and Neelakanta, the author of Vyavahara Mayukha. Mitra Misra says in Vira Mitrodaya—"But in reality the meaning of the part—'except with the assent of her husband'—is that, while the husband is alive, a son shall not be adopted by the wife without the assent of the husband; but, when the husband is dead, the assent of those only is necessary on whom she is dependent." Mitra Misra flourished at the end of the sixteenth century. He says in the Vira Mitrodaya that he composed his work by order of the Bandala King Birasimha, who is no other than the well-known Birsinghdeo of Archa who murdered Abul Fazl. Though Mitra Misra is esteemed in the Benares school of law, it is interesting to note that his view stated above has not been accepted by that school, but has found favour in the Madras school of law. However that may be, in these progressive days, the theory that a woman is under perpetual tutelage must give way so as to admit of the law on the question of capacity to adopt being brought into line with the more advanced view prevailing in the Bombay school of law, based on the view of Anantha Deva in his Samskara Kaustubha. According to that work, even the sanction of the deceased husband's relatives is not required in order to entitle the widow to adopt. Ananta Deva has tried to get over the Rishi texts relating to the guardianship of females by observing that those texts are meant to protect females from doing what is improper and unlawful. After making that observation he goes on to say—

> "But in respect of the performance of acts enjoined by the Sastras, females are as independent as men; and such being the case the sanction of the husband's kinsmen is no more required for making a valid adoption than for performing any religious Vratha."

"भर्तुः"

In that respect, the view of Anantha Deva goes even further than that of Neelakanta, the author of Vyavahara Mayukha whose view, as already mentioned, is similar to that of Mitra Misra, the author of Vira Mitrodaya. The Bombay School of law seems to have accepted the more liberal view of Anantha Deva, even in preference to the view of Neelakanta in Vyavahara Mayukha which is of paramount authority in that school.

Where the husband was separate at the time of his death and the widow has succeeded to his estate as heir, the view taken in Bombay uniformly has been that she may adopt without the consent of her husband's sapindas. But the law in that school was fluctuating until 1933 as regards her power to adopt when her husband was joint at the time of his death. In *Ramji* v. *Ghamau*, 1879, 6 Bom. 498, a Full Bench of the Bombay High Court held that such a widow cannot adopt when she had not the authority of her husband or the consent of his undivided coparceners. In *Yadeo* v. *Namadeo*, 1921, 48 I. A. 513, the Judicial Committee of the Privy Council took a different view. But in *Eswaradadu* v. *Gajabai*, 1925, 50 Bom. 468, it was held by a Full Bench of the Bombay High Court that the observations of the Judicial Committee in *Yadeo* v. *Namadeo* were obiter, and that the view taken in *Ramji* v. *Ghamau* had not been overruled. In a later case *Bhimabai* v. *Gurunathgowda*, 1932, 57 Bom. 157, the Privy Council held that *Ramji* v. *Ghamau* was overruled by *Yadeo's case* and that the decision in *Eswardadu's case* was erroneous. It was held in that case that the adoption made by a widow, without the authority of her husband and without the consent of a sole coparcener when her husband had died undivided, was valid. This view was later reiterated by the Privy Council in *Vijayasingji* v. *Shivasingji*, 1935, 62 I. A. 161. Therefore, it may now be taken to be the law in the Bombay School that, in the absence of a prohibition by the husband, a widow may adopt a son to him without the husband's authority and without the consent of her husband's sapindas, whether her husband was separate or was joint at the time of his death.

Sub-section (1) of section 9 of the 1933 Act is as follows:—

> "In the absence of an express prohibition in writing by the husband, his widow, or where he has left more widows than one, the senior most of them shall be presumed to have his authority to make an adoption."

This sub-section came up for consideration by the High Court of Mysore and the judgment is reported in *Srinivasa Rao* v. *Lakshmana Rao* 42 Mys. H.C.R. 37. It was there said—

> "It is impossible I think to read it as meaning that, in the absence of a prohibition in writing from her husband, a widow shall have a right to make an adoption. That is not what the section says. It is perhaps surprising that, in a Regulation intended to make amendments in Hindu Law, a provision in regard to procedure should have been introduced. But the language of the section shows clealy that the amendment made by it is an amendment of procedure. So far as I can see, it cannot be interpreted as making it unnecessary for a widow, who wishes to make an adoption, to have either the authority of her husband or that of his sapindas. All that it does is to provide that, when a question arises whether a widow has her husband's authority or not, then in the absence of a written prohibition from him it shall be presumed that she has that authority, that is, those who have to decide the question must hold that she has the authority until it is shown that she has not" (p. 41).

If we now turn to the Report of the 1929 Committee, it will be possible to get an idea of the change intended to be effected in the law by sub-section (1) of section 9 of the 1933 Act. At page 113 of the report that Committee observes :—

> "Various suggestions in connection with adoption have been pressed upon us, most of which we have not been in a position to accept..... This however is not the case as regards the important suggestion that a widow may be empowered to adopt in the absence of express prohibition by the husband. There is much to be said in favour of such a rule, which is also the law obtaining in Bombay and which, if adopted, will obviate the need for seeking the consent of sapindas."

What the Committee had in mind was evidently a rule like the one obtaining in Bombay empowering a widow to adopt to her husband in the absence of express prohibition by him. The rule against adoption in the face of an express prohibition by the husband, being common to all schools, does not require consideration. But it is clear that in Bombay the consent of the sapindas is considered unnecessary, because the widow is considered to be clothed herself with the right to adopt. As noticed above, for the adoption by a widow no authority even from the husband is necessary, so that no question of any consent by the kindred as a substitute therefor is essential. No question of any presumption can ever arise in such a case. The right is vested in her as a religious duty independent of and without the need for any authority—express or presumed—of her husband or of his sapindas. It is evident

therefore that the intention underlying sub-section (1) of section 9 was to *empower* a widow to adopt to her husband; but unfortunately, this intention has been unfulfilled by reason of the language in which this sub-section is worded.

The Committee considers that the present occasion for amending the 1933 Act should be availed of to make that intention explicit and effective. Where the husband has not expressly forbidden an adoption, there is no reason why the authority of a widow should be based on a presumption. As long as the prohibition by a husband could, as was the law before the 1933 Act, be either express or a matter of inference or deduction from his disposition of property or otherwise, there was scope for raising a presumption in favour of adoption liable to be upset by proof of such implied prohibition. But the moment that the prohibition is declared to be effective only when in express terms [Sec. 9 (1) of the Act], the need for a presumption disappears. It is desirable therefore that a widow should be given, as she was undoubtedly intended to be given, power to adopt where there is no express prohibition. In the presence of an express prohibition, there is no presumption liable to be upset; but the basis of the power of the widow disappears so that she has no power at all. The Committee has therefore redrafted sub-section (1) of section 9 to accord with this intention. The sub-clause as redrafted will be found in the Bill appended to this report.

By far, however, the more important and the more difficult question is the one relating to the effect of adoption by a widow. By the act of adoption there springs into existence a son of the husband, may be as a coparcener in the joint-family of the husband, or may be as till now a preferential heir liable to divest her own estate, or as now recommended by the Committee in another part of the report, sharing simultaneously with her. There is also introduced, in respect of other kinsmen of the adoptive father or the adopting widow, a relative who may be an heir or to whom succession may be traced. It is in this sense that adoption, which is essentially of a religious character ಪಿಂಡೋದಕಕ್ರಿಯಾಹೇತೋಃ or flows from a natural desire to perpetuate the family ನಾಮಸಂಕೀರ್ತನಾಯಚ, has far-reaching consequences in the realm of the law of property.

पिण्डोदकक्रियाहेतोः
नामसन्कीर्तनायच

It is natural also to expect that the validity of an adoption will come up for consideration before courts only in relation to questions of property. It is of no interest to third persons, whether an adoption by a widow is within her power or competence and would secure the spiritual benefit of the adoptive father and his ancestors. But the moment that adoption affects their rights to property, its validity becomes of paramount importance to them. There have been reported cases where the adopting widow has herself challenged the validity of the adoption made by her. It has therefore happened that the validity of an adoption has always been raised as an issue, only in order to determine the merits of rival claims to property. This has resulted in two unfortunate circumstances. The validity of an adoption, in other words, the right of a widow to make an adoption, has been judged by its effect on devolution of property, so that adoptions have been held to be invalid not on considerations of the power available but on considerations of the effect of the exercise of that power, a confusion of two different issues. Secondly, what may be called the religious theory of adoption as opposed to the secular theory has been thereby denied recognition, and the foundation of the practice of adoption has been differently stated by different judges. The result has been a mass of case law which has to a great extent blurred the essential features of the doctrine of adoption, and has rendered it difficult to ascertain what exactly are the true principles to be deduced therefrom. It is somewhat fortunate, however, that in some recent decisions of the Privy Council the entire subject has received detailed examination, and the fundamental principles which should govern it have been clearly and unequivocally laid down.

In Mysore also, a recent decision by a Full Bench of the High Court in S.A. No. 574—46-47 (*Chikkavva* v. *Chikkappa*) has made a detailed examination of the basis of adoption, and after overruling two earlier judgments, has set out clearly the principles which should be followed by courts. In the light of this Full Bench decision of the Mysore High Court, it is unnecessary to make any detailed examination of the earlier case law on the subject. Further, this Committee feels that it is not adoption in gereral, but only adoption by a widow which falls properly within its purview.

As observed in the order of reference to the Full Bench in *Chikkavva* v. *Chikkappa* .

"The law relating to adoption by females has developed upon the theory that a woman acts under a delegated authority from her husband, that she can adopt to no one but her husband, and that the wife is the only person to whom the husband may delegate the power of adoption. That is based on the theory that the wife forms half the body of the husband and that, when she makes the adoption in pursuance of the authority given to her by her husband, it should be deemed to be the act of the husband. Authority to adopt is only prescribed by reason of the fact that a woman is under perpetual tutelage and stands in need of advice. That is the reason why in the Dravida school of law, in the absence of an authority given to a female by her husband, she can adopt with the consent of the sapindas. But the law on the point has been liberalised in Mysore by section 9 of the Hindu Law Women's Rights Act, according to which the husband's authority shall be presumed, in the absence of an express prohibition in writing by the husband."

For the reasons given in the earlier part of this Chapter, the Committee has proposed to further liberalise the law regarding a widow's right to adopt by suggesting that sub-section (1) of section 9 may be amended by providing that, in the absence of an express prohibition in writing by the husband, his widow or, where he has left more widows than one, the seniormost of them may adopt a son to her husband. While adoption by a widow is in the nature of a "constructive pregnancy," it has been long recognized that "there must be some limit to its exercise, or at all events some conditions in which it would be either contrary to the spirit of the Hindu doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect" (*Amarendra* v. *Santan*, 1933 P. C. 155). Upon the difficult question of where the line should be drawn and upon what principle, there have been considerable differences of opinion.

The starting point of this limitation was the decision of the Privy Council in *Bhoobunmoyee* v. *Ramakishore*, 10 M.I.A. 279. The limit to be assigned to the power of a widow to adopt was reached in this case on a number of alternative reasons. The result has been that each one of these reasons was seized upon as the foundation of different and some times conflicting streams of thought in regard to this subject. While *Bhoobunmoyee's case* related to a case of succession, the first *Chinnakkimidi case* I.L.R. 1 Mad. 69 also decided by the Privy Council related to a case of adoption to a deceased member of a coparcenary, and the *Guntur case* I.L.R. 1 Madras 174—yet another early decision of the Privy Council—was one in

which property had devolved on a son and thereafter on his mother who effected the adoption after the son's death. These three cases were at one time construed as marking a difference in the widow's power, between a case of vesting by inheritance and devolution by survivorship, the former being represented by *Thayammal* v. *Venkatarama* I.L.R. 10 Mad. 205 and *Tarachurn Chatterjee* v. *Sureschandra*, I.L.R. 17 Cal. 122, the latter by *Bachoo v. Mankorebai*, I.L.R. 31 Bom. 373. One other case to which reference may be made is *Chandra* v. *Gujarbai*, I.L.R. 14 Bom. 463, where the adoptive father happened to be a member of a joint family which had no male members at all at the time the adoption was made, so that it fell under neither of the above two groups. One point was in common in all these cases. The limit of the widow's power was assumed to depend on the consequence of such adoption on property, in other words, on the vesting and divesting of property as a consequence of the adoption in question.

In *Ramakrishna* v. *Shama Rao* I.L.R. 26 Bom. 527, however, a different test was enunciated as follows:—

> " Where a Hindu dies leaving a widow and a son and that son himself dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption the power of the former widow is extinguished and never afterwards be revived ".

This judgment has been approved by the Privy Council in a number of subsequent decisions starting from the second *Chinnakkimidi case* (*Madana Mohana* v. *Purushottama*, I.L.R. 41 Mad. 855). In *Pratapsingh* v. *Agarsingh*, the Privy Council expressly negatived this link between the power to adopt and the effect of such adoption on property, and clearly stated that the power could be exercised as long as it is not exhausted or extinguished. As observed by Venkatasubba Rao J. in *Panyam* v. *Ramalakshamma*, I.L.R. 55 Mad. 581,—

> " The true test, therefore, of the principle defining the limit, is to be sought not in the rule of divesting or otherwise of an estate, but in the rule that requires the continuance of a person to perform all the requisite religious services ".

Finally, in the leading case of *Amarendra* v. *Santan*, A.I.R. 1933 P.C. 155, Sir George Lowndes, after an elaborate examination of the authorities, came to the conclusion that the foundation of the doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the

necessary rights. The devolution of property though recognized as an inherent right of the son was held to be altogether of secondary consideration. He observed—

> "It necessarily follows, their Lordships think, from this decision, that the vesting of the property on the death of the last holder in some one other than the adopting widow, be it another coparcener of the joint family or an outsider claiming by reverter, or, their Lordships would add, by inheritance, cannot be in itself the test of the continuance or extinction of the power of adoption ..... It being clear upon the decisions above referred to that the interposition of a grandson, or the son's widow brings the mother's power of adoption to an end, but that the mere birth of a son does not do so, and that this is not based upon a question of vesting or divesting of property, their Lordships think that the true reason must be that where the duty of providing for the continuance of the line for spiritual purposes which was upon the father and was laid by him conditionally upon the mother, has been assumed by the son and by him passed on to a grandson or to the son's widow, the mother's power is gone. But if the son dies himself sonless and unmarried, the duty will still be upon the mother and the power in her which was necessarily suspended during the son's lifetime will revive."

Unfortunately, however, these decisions were understood by the Bombay High Court as relating only to the validity of the adoption, its effect upon devolution of property being again dependent on the question whether the adoptive father at his death was a coparcener or not. This interpretation was followed in Mysore also in *Sankaramma* v. *Krishna Rao*, 43 M.H.C.R. 415 and *Dasappa* v. *Seshagiri Rao*, 43 M.H.C.R. 438. In both these cases the adoption in question was held to be valid but effect was refused to the adopted son's right to property, in one case in the joint family property which had become disrupted by partition between the death of the adoptive father and the adoption, and in the other in the property which had vested by inheritance in a collateral. In these two judgments the validity of the adoptions in question was accepted. Reilly, C.J. in the former case observed:—

> "In my opinion that a widow's husband had died a coparcener in his joint-family and his coparceners have become divided after his death or the coparcenary has come otherwise to an end does not affect the right to make a valid adoption in any way".

In the order of reference to the Full Bench decision in *Chikkavva* v. *Chikkappa*, this view of the High Court in the two judgments referred to above has been accepted and the question referred to the Full Bench was only in respect of the effect of adoption on rights to property. The

Committee is therefore of opinion that the course of decisions in India, including Mysore, requires that the only intelligible test to be adopted to indicate the limits to be assigned to a widow's power to adopt should be that laid down in *Ramakrishna* v. *Shama Rao* and approved by the Privy Council on a number of occasions.

The more important question, however, is the one relating to the effect of adoption on property, and it was this question which was examined by the Full Bench in *Chikkavva* v. *Chikkappa*. The question referred to the Full Bench was in the following terms :—

> " Where, after the death of the last surviving coparcener in a joint Hindu family, the family property passes by inheritance to his heir, and subsequently the widow of a predeceased coparcener makes an adoption in pursuance of an authority to adopt given to her by her husband, does the adoption date back to the death of the adoptive father and will it have the effect of divesting the estate vested in the heir of the last surviving coparcener, or in persons claiming through such heir, and vesting the property in the adopted son subject to lawful alienations made in the meantime by the person who was entitled to hold the estate until the adoption? Whether the law laid down in Sankaramma *v.* Krishna Rao, 43 Mys. H.C.R. 415 and Dasappa *v.* Seshagiri Rao, 43 Mys. H.C.R. 438 as regards the effect of the adoption on the property is correct? "

In this case one Huchobappa and his two sons Chikkappa and Hanumanthappa formed a joint Hindu family owning joint family property. Chikkappa died in 1918 leaving his widow Siddavva. After Huchobappa's death subsequently, the family consisted of Hanumanthappa the sole surviving coparcener. After his death, his widow Gangavva gifted away some of the joint family properties to her daughter, the plaintiff in this suit, in January 1944. Siddavva, the widow of Chikkappa, adopted the first defendant in December 1944. The question therefore came up directly for decision, whether the adoption had the effect of divesting the estate vested in the heir of the last surviving coparcener, or in persons claiming through such heir. Both the order of reference and the decision of the Full Bench, upon an elaborate examination of all the authorities in India and Mysore, came to the conclusion that the law laid down in *Sankaramma* v. *Krishna Rao*, 43 M.H.C.R. 415 and *Dasappa* v. *Seshagiri Rao*, 43 M.H.C.R. 438 as regards the effect of the adoption on the property, was not correct and was not also in keeping with the latest decisions in India.

As noticed already, the whole theory of adoption is based on the notion that an adopted son is the continuator of his adoptive father's line exactly as an aurasa son, and that an adoption, as far as the continuity of the line is concerned, has retrospective effect. As observed by the Nagpur High Court in A.I.R. 1942 Nag. 19,—

> " We regard it as clear that a Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male member to it. The family cannot be at an end while there is still a potential mother if that mother in the way of nature or in the way of law brings in a new male member ".

An adopted son " is in contemplation of law a child begotten by the father who adopts him or on behalf of whom he is adopted " (*Tagore case*). It is this principle which is referred to when an adoption is spoken of as relating back to the date of death of the adoptive father. There has to be no hiatus in the family line if adoption should be held to have the same result as the birth of a son to the adoptive father. In Mysore, at least, this principle was approved as early as 17 M.H.C.R. 145 where it was laid down that " the adopted son stands exactly in the same position as if he had been born to his adoptive father and his title relates back to the death of his father to the extent that he will divest the estate of any person in possession of the property of that father to whom he would have had a preferable title if he had been in existence at the time of his adoptive father's death ". While the two decisions of the High Court in 43 M.H.C.R. accepted this principle so far as the continuity of the family line and religious consequences were concerned, they refused to give it effect so far as it affected property. The recent Full Bench decision in *Chikkavva* v. *Chikkappa* in speaking of this distinction observes, that it " overlooked a very important feature of the Hindu Law of adoption that, according to Dharma Sastras, the effect of an adoption as regards the Gotra, the Rikta and the Pinda should be the same and the three things cannot be dissociated from each other. It is therefore impossible, according to the Dharma Sastras, to say that for purposes of the continuance of the family line and religious ceremonials or acts (Gotra and Pinda) the adoption must relate back to the death of the adoptive father, while as regards property (Riktha) it cannot have that effect ". Not only the texts but even judicial authority in India is to the same effect. In *Anant* v. *Shanker* A.I.R. 1933 P.C.

196, it was held that an " adoption being valid cannot be refused effect ".

The Committee is of the opinion that the time has come when the whole of this branch of the law of adoption should be placed on an intelligible and understandable basis. The recent Full Bench decision has gone a long way in clearing the ground of much confusion, and in adopting the principles laid down in the ancient texts and in the recent decisions of the Privy Council. It would be convenient, however, to remember that the rights of an adopted son may arise in respect of different kinds of property and to examine each one of such cases separately. The property may have belonged to his adoptive father and may have been the interest he possessed as a member of a joint Hindu family, or it may have been property which he possessed as his self-acquired property. The property may be of a relation by adoption to which he has become heir by reason of the adoption.

Taking the case of property of the adoptive father, the joint and undivided family being the normal condition of Hindu society may be considered first. By a valid adoption, the widow of a deceased coparcener introduces into the family another coparcener. The adopted son becomes for all purposes the son of the adoptive father and occupies the same position as an *aurasa* son. He gets in the family property the same rights and interest that a natural born son of his adoptive father would have got. The theory of adoption depends on his complete substitution into the adoptive family as if he were born in it. These principles have been long established and admit of no doubt. (See *1st Chinnakkimidi case*, I.L.R. 1 Mad. 69).

Even where the coparcenary has dwindled to a sole surviving coparcener, an adoption by the widow of a predeceased coparcener results in introducing the adopted son as coparcener in the family (See *Bachoo* v. *Mankorebai*, 31 I.L.R. Bom. 373 P.C.).

Where, after the death of the adoptive father, the other coparceners go to partition and the adoption is made thereafter, the adopted son is entitled to have the partition reopened and his share allotted to him just like a posthumous son (See *Sankaralingam Pillai* v. *Veluchami Pillai*, A.I.R. 1941 Mad. 338 and A.I.R. 1943 Mad. 43).

Finally, where the sole surviving coparcener of a joint family dies so that the family property passes by inheritance to his heir-at-law, any subsequent adoption

by either his widow, or the widow of any other predeceased coparcener, would make the adopted son a member of that defunct joint family with the same rights which such a member would possess (See *Anant* v. *Shankar*, A.I.R. 1943 P.C.).

Taking next, the case of the separate property of the father, he will divest the estate of any person in possession of the property to which he would have had a preferable title, if he had been in existence at his adoptive father's death. Except in cases where any special feature of the property in question determines otherwise, the adoptive mother is under the normal law of succession the heir nearer than any other, so that by the adoption she will divest her own estate and the adopted son becomes full heir subject to her rights to maintenance. (This does not have reference to provisions in enactments which give the widow substantive rights to such property or any other provisions therein which modify the normal Hindu Law).

The case of property belonging to a collateral who becomes related to the adopted son only by the adoption presents somewhat more formidable difficulties. The judicial decisions themselves seem to treat this subject under two different headings, one where the collateral is a lineal heir of the adoptive father, and the other all other cases of collateral succession. The first class of cases is exemplified by *Amarendra's case* and *Pratapsingh's case* where the adoption was not to the last male holder but to his father, so that by the adoption it was not a son who came into existence but a brother of the last male holder. In *Anant* v. *Shankar*, A.I.R. 1943 P.C., these two cases were understood as laying down clearly that the property in question belonged to the adopted son as heir of the last male owner and not by virtue of the property being joint-family property. *Chandra's case*, where Telang J. understood *Bhoobunmoyee's case* as involving that adoption by a widow does not divest the estate of one on whom the inheritance has devolved from a lineal heir of the husband, cannot any longer be considered good law and must be considered overruled. *Anant* v. *Shankar* says so explicity. In regard to this class of cases therefore, it must be taken to be settled law that an adoption to the father of the last male owner will divest the estate which vested on the death of such owner in a collateral or other heir. This will be so of course only where the collateral or other heir would not have taken if the

adopted son had been in existence on the death of the last male owner, because the adopted son's title springs from the fact of his being an heir nearer than the collateral or other heir. In the latest edition of Mayne it is stated—"where the property of A descends to his son B and on his death leaving no widow but a daughter or daughter's son, A's widow adopts C, under the Mitakshara Law, C would divest the ancestral estate vested in the daughter or daughter's son for he would have been a coparcener. He would not however divest the separate property of B, for the daughter or daughter's son would be the perferable heir" (10th Edition pp. 270-271). To the same class of cases belongs one where after the son's death leaving no issue or widow, the mother succeeds as heir and then adopts. In such a case, the heir-at-law before the adoption would be the mother herself and under the normal Hindu Law she would be a nearer heir than the son adopted by her. The adopted son becomes only a brother of the predeceased son of the adopting mother and is a more remote heir than the mother. *The Guntur case* I.L.R. 1 Mad. 174, already noticed, laid down that in these circumstances the adoption was valid. This case, however, has been always recognized as an authority for the proposition that an adoption divests the mother's estate also. This rule is really an exception to the ordinary rule of succession and different reasons have been advanced in subsequent decisions to explain why it is so. They have all been noticed by the Madras High Court in *Pattu Achi's case*, A.I.R. 1941 Mad. 699, where Leach, C.J. has himself enunciated another reason: "Why could not the reason for the divesting be placed on the broad ground that the act of adoption implies it?" In all these cases, however, the property in question was property which originally belonged to the adoptive father and thereafter passed to the last male owner (son), and the several reasons advanced as to why the mother who is nearer heir should be dispossessed were based on arguments which did not lose sight of this original ownership of the adoptive father.

In *Suryanarayana* v. *Ramdoss*, I.L.R. 41 Mad. 604, Seshagiri Iyer J. adopted this rule even in regard to property which was the self-acquired property of the predeceased son. Mayne (10th Edition) has however criticised this judgment. In *Anant* v. *Shankar*, where due to the peculiar character of the property in question, the heir was not the mother but a distant collateral, the Privy Council in discussing the rights of a

son adopted by the mother observed that no distinction could be drawn between property which came to the last male owner from his father and any other property he may have acquired.

Finally in respect of property belonging to a collateral other than a lineal heir of the adoptive father, it has been understood for a long time that the decision of the Privy Council in *Bhubaneswari* v. *Nilcomal* I.L.R. 12 Cal. 18, was conclusive on the point. It was there stated—"According to the law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral". This statement, in so far as the collateral is a lineal heir of the adoptive father, is no longer good law and the question whether it continues to be good law in respect of other collaterals after *Anant* v. *Shankar*, or will require reconsideration is one which will doubtless engage Indian Courts, but the Committee finds it unnecessary to dwell at length on this subject in view of the recommendations it proposes to make later.

Such is the state of the law in India. In Mysore, the Full Bench of the Mysore High Court in the recent case of *Chikkavva* v. *Chikkappa*, has held that, so far as the property of the adoptive father is concerned, the law is the same as in India. The Full Bench has definitely overruled the notion that different considerations apply to the validity of an adoption and its effect on property. It has also expressed itself in favour of the view that the theory that an adopted son is in the same position as a posthumous son of the adoptive father "should be carried to its logical conclusion". What that conclusion is in respect of collateral succession has now to be examined.

As noticed already, the judicial decisions in India appear to treat this subject under two different headings; one where the collateral to whom succession is traced is a lineal heir of the adoptive father and the other all other cases of collateral succession.

On principle, it is difficult to justify this distinction between succession to the collateral who is a lineal heir of the adoptive father and to one who is not a lineal heir. The trend of modern decisions in the Provinces of India is towards giving effect to the single intelligible principle of treating the adopted son as a posthumous son for all purposes and, in the light of the decision in *Anant* v. *Shankar*, it may well be that succession to a collateral other than a lineal heir of the adoptive father will also follow this

principle. The confusion appears to have arisen in the tendency to treat property of the adoptive father in the hands of a lineal heir as continuing to still bear the impress of such prior ownership by the adoptive father. This is legally indefensible. In *Anant* v. *Shankar* the principle was recognized even in respect of the self-acquired property of the son of the adoptive father and the adopted son held entitled to succeed though this item of property had never belonged to the adoptive father. Even if such property had belonged to the adoptive father, it would not be correct to speak of it as the property of the adoptive father after it had descended to the son and had become in every sense that son's property. Where, after the father's death, it passes to the son and an adoption is made to the father thereafter, the property cannot be any longer considered the father's. The adopted son gets rights by virtue of his relationship to the son as brother and not to the father as son. In *Bhoobunmoyee's case,* the Privy Council has expressly laid down that in the case of inheritance, the person to succeed must be the heir to the last full owner. The Committee therefore feels that to recognize the adopted son's rights as equal to these of a natural born son only for certain purposes is not founded on any legitimate grounds and would merely tend to complicate the law by introducing too many unnecessary distinctions. The acceptance of a single intelligible principle applicable to all circumstances is not only a step in the right direction but is also not opposed to any equitable considerations. The Committee is aware that this would tend to go contrary to the dictum of the Privy Council in *Bhubaneswari* v. *Nilcomal* that "according to the law an adoption after the death of of a collateral does not entitle the adopted son to come in as heir of the collateral" (12 I.A. 137). In that case, the adopted son was not born or even conceived at the time of the adoptive father's death and could never in the course of nature have become heir to the adoptive father, and this was in fact the main ground for the decision. The reference in *Anant* v. *Shanker* to the statement extracted above should not be considered as an approval of that statement, and it may well be that the logical result of *Anant* v. *Shanker* would be in the direction of applying the same principles as were adopted in that case even to succession to other collaterals. Such an extension was not necessary to determine the issues in the case. The opinion expressed in *Faizuddin* v. *Tincowri Saha,*

I.L.R. 22 Cal. 565, that *Bhoobunmoyee's case* involved that no adopted son could claim as preferential heir the estate of any person other than his adoptive father if such estate had vested in some heir other than the adopting widow, has not been accepted as good law in *Anant* v. *Shanker* and this is a pointer in the direction of extending the principle now under consideration to all cases.

Finally, the acceptance of this principle would also be to prevent the adopted son from divesting the mother of the property she inherits from her son. Under the ordinary law of succession, the mother is preferential heir to the brother and the *Guntur case* has been interpreted in a way which the judgment itself may not support. In that case the decision turned mainly on the validity of the adoption. Further, the adopted son sued to recover possession *after* the death of the adoptive mother from her daughter who has taken possession. In *Ramaswami Iyer* v. *Venkataramiah*, I.L.R. 2 Mad. 91, the Privy Council made it clear that it had not pronounced on this question in the earlier decisions. "Whether by the act of adopting another son she in point of law divested herself of that estate in favour of the second son may be a question of some nicety on which their Lordships give no opinion." Sir John Colville who was a member of the Board in this case was also a party to the decision in the *Guntur case*. This recognition of the mother's superior title to that of the second adopted son is merely an extension of the normal rule of succession in Hindu Law, and is in fact only a restatement of the law as embodied already in the 1933 Act.

To the principle as thus understood, however, there have to be some obvious conditions attached, necessitated by the fact that though the adopted son's right relates back to the father's death, nevertheless in point of fact, one or more estates have intervened between the death and the adoption. At the time that such intermediate owner or owners were in possession and enjoyment, there can be no justification for imposing any restriction on their powers on the ground that a possible future adoption may bring about a preferable title. As observed by Venkatasubba Rao J. in *Veeranna* v. *Sayamma*, I.L.R. 52 Mad. 398, "The mere fact that the widow of a deceased member exists, hinders the male owner from dealing with, what is presumably, his own property. The widow may never adopt and yet the fetter is quite effectual. If the widow

happens to outlive the surviving coparcener, the restriction on his power lasts till his death." Mayne in his Hindu Law says, "It would be intolerable that he (a Hindu proprietor) should be prevented from dealing with his own on account of a contingency which may never happen". It is for these reasons that courts have always recognized that the right of an owner to deal with his property within his rights is unaffected by a possible future adoption creating a better title. As early as 7 M.I.A., it was held that a widow had all powers available under the general Hindu Law in respect of property inherited by her, irrespective of an unexercised power of adoption in her, and the adopted son took subject to valid alienations made by her. In *Krishnamurthy Iyer* v. *Krishnamurthy Iyer* which was a case of a disposition by will exercised prior to an adoption, the Privy Council stated, "When a disposition is made inter vivos by one who has full power over property under which a portion of that property is carried away, it is clear that no rights of a son who is subsequently adopted can affect that portion which is disposed of. The same is true when the disposition is by will and the adoption is subsequently made by a widow who has been given power to adopt. For the will speaks as at the death of the testator and the property is carried away before the adoption takes place" (I.L.R. 50 Mad. 497 at 525). Even in the first *Chinnakkimidi case*, I.L.R. 1 Mad. 69, a claim for mesne profits was refused till the adoption. An extreme instance arose in *Veeranna* v. *Sayamma*, I.L.R. 52 Mad. 398, where a son before his death authorised his wife to adopt and thereafter the father as sole surviving coparcener settled practically the whole of the family property on his daughter. Thereafter, the widow of the son adopted to him and it was held that the adopted son had no right to question the disposition by his adoptive grand-father.

It has, however, to be remembered that the dispositions in all these cases were within the competence of the owner making them. If a widow who gets a limited estate unauthorizedly alienates the property in circumstances which would render the transaction liable to be impeached by a reversioner, there is no reason why an adopted son should not also be in a position to do so. Or, to take the case of a joint-family, where one coparcener exceeds his powers so that any other coparcener could successfully challenge the transaction, a son adopted into the family and becoming a coparcener should have the same right to do so.

To the principle that the adopted son has in his new family precisely the same rights as a natural son and that his title dates back to the death of the adoptive father, should therefore be added the limitation that he takes the estate subject to dispositions made within the competence of the person or persons who were entitled to hold the said estate until his adoption. In *Shankaralingam* v. *Veluchami*, A.I.R. 1942 Mad. 338, and A.I.R. 1943 Mad. 37, this limitation has been approved. Even in *Anant* v. *Shankar*, A.I.R. 1943 P.C., it is observed that " Keshav's (the deceased son) right to deal with the family property as his own would not be impaired by the mere possibility of an adoption—cf 52 Mad. 398 ". Such a limitation has also been expressly recognised in the Full Bench decision of the Mysore High Court in *Chikkavva* v. *Chikkappa*.

The cases of a coparcenary in which a partition may have taken place after the death of the adoptive father but before adoption, and similarly where property has devolved before the adoption from a sole coparcener to his heirs, appear to require some further consideration. In both these cases the character of the family and the nature of the property have changed, and on the date of adoption there is no joint family into which the adopted son could be introduced as a member. Though the theory of relating back would be to resuscitate the defunct family and clothe the adopted son with the rights of a member of such family, it appears to the Committee desirable, in view of the vital changes which had occurred in that family in the meanwhile to provide that only adoptions made within a limit of time should entitle the adopted son to rights in the family. The Committee therefore recommends that an adopted son should not be given the right of re-opening partitions which may have taken place after his adoptive father's death and before his adoption, and get rights to any part of the joint family property thereby, and should not also be given rights to property which may have devolved from a sole coparcener to his heirs, unless the adoption itself was made within twelve years from his adoptive father's death. The period of twelve years appears to the Committee to be a reasonable period considering that the property was joint family property in which the adoptive father had a right by birth and in which a natural born son would also have had a right by birth, and any shorter period would work to the detriment of the adopted son who would if adopted after the prescribed period lose all rights in such property.

The Committee feels that, in the case of a joint family, a longer time limit should be prescribed than in other cases.

There is one other limitation which the Committee considers it fit to impose. This is in relation to collateral succession. It is aware that by recognizing the rights of an adopted son as relating back to the adoptive father's death so far as collateral succession is concerned, it will in effect take an estate out of one owner and vest it in another though it may be in one who is a nearer heir. The Committee considers that, in such a case also, a time limit should be imposed so that it would be only adoptions made within a prescribed period of time after the adoptive father's death that will have this result. Two of the questions framed by the Committee were in the following terms:—

"*Q.* 11—In cases where an adoption by a widow is valid, are you in favour of recognizing the adopted son as an *aurasa* son for purposes of succession to property?

Q. 12—If the answer to question 11 is in the affirmative, would you impose on the widow any time limit within which to make the adoption in order not to disturb successions which have already taken place?"

The answers received to these questions have suggested the need for prescribing such a time limit. The Committee therefore recommends that in regard to collateral succession, it is only where an adoption is made within six years from the death of the adoptive father that the adopted son will get rights to property which did not belong to the adoptive father, but which a natural born son of the adoptive father would have been entitled to inherit as nearest heir, subject to lawful alienation in the meanwhile. This period of six years has been arrived at as the most suitable after a careful consideration of the equities.

A somewhat similar limitation in respect of succession to the heritable property of the adoptive father also appears to require consideration. As a result of the recommendations made by the Committee in another part of this report, the only persons who would succeed to the heritable property of a deceased person in circumstances which permit of an adoption to him are the widow, or the widow and unmarried daughter. The estate which they or either of them takes would depend on whether a daughter or daughter's son was in existence (see section 10 as redrafted by the Committee).

In other words, the estate may be limited or full. If the result of an adoption is to date back the adopted son's rights to the death of the adoptive father, then the women (widow, or widow and unmarried daughter) entitled to succeed would have to concede to the adopted son a part of the estate, the share depending on how the redrafted section 4 is worked out in the circumstances of each case. In these circumstances, the Committee considers it but proper that irrespective of whether the women take a limited or full estate the adopted son's share should be safeguarded to him so that his share should not be liable to be disposed of by the widow, or widow and unmarried daughter. Considering that even in the presence of a son, the widow and daughter get for the first time shares in the estate of the deceased, it appears to the Committee to be necessary to safeguard his share of the estate from being disposed of prior to the adoption. The amendment to section 4 of the 1933 Act proposed by the Committee gives to the widow and the daughter for the first time a share in the deceased's estate, and it is but fair that the share left to a son should be available to him even though he be an adopted son.

But, as observed in respect of collateral succession, even here a time limit appears desirable; and the Committee considers that if an adoption is made after six years of the adoptive father's death, alienations within the competence of the widow, or widow and unmarried daughter should not be liable to be impeached by the adopted son even if it affects his share, or what would have been his share if he had been adopted prior to such alienation.

These several recommendations have been embodied in the draft Bill prepared by the Committee.

In view of the changes in the substantive law effected by these recommendations, the Committee is of the opinion that the new provisions should apply only to adoptions made after the changes now recommended become law. A provision to this effect has also been embodied in the draft Bill prepared by the Committee and appended to this report.

The Committee will now pass on to one other aspect of the law of Adoption. In *Krishnamurthy Iyer* v. *Krishnamurthy Iyer*, I.L.R. 50 Mad. 508, Viscount Dunedin observed—

"The adopted son has in his new family precisely the same rights as a natural son save only when the question is one that

raises a competition between the natural and the adopted son".

The exception in the above dictum relates to the distinction made in Hindu Law between the shares allotted to an adopted son and an *aurasa* son born to the adoptive father after the adoption. That exception is based on the following text of Vasishta :—

"ತಸ್ಮಿಂಶ್ಚೇತ್ಪ್ರತಿಗೃಹೀತೆ ಔರಸ ಉತ್ಪದ್ಯೇತ ಚತುರ್ಥ ಭಾಗ ಭಾಗೀ ಸ್ಯಾದ್ದತ್ತಕಃ ॥".

"When a son has been adopted, if a legitimate son be afterwards born, the adopted son shares a fourth part".

The vague and ambiguous part of that text, namely, "the adopted son shares a fourth part" has been interpreted in different ways, with the result that there is considerable difference between the different schools of law about the actual share that should be allotted to an adopted son in competition with a natural afterborn son. According to the Dayabhaga school, the adopted son gets 1/3 of the adoptive father's estate. According to the Mitakshara Law in the Benares school, he would get 1/4 of the estate and in the Bombay and Madras Presidencies he gets 1/5 of the estate. Such is the law amongst the twice born classes. Amongst Sudras, however, the adopted son gets an equal share with the afterborn *aurasa* son. It has been so held in Madras and Bengal. In Bombay, however, it has been held in *Tukaram* v. *Ramachandra*, I.L.R. 49 Bom. 672, that even in the case of the Sudras, he takes 1/5 of the estate. If the unequal distribution of the adoptive father's estate between the adopted and the afterborn legitimate son among the Dwijas is based upon the relative superiority and inferiority of their status, the same principle ought to apply even in the case of Sudras. Whatever might have been the reasons for making a distinction between Dwijas and Sudras in this respect, the Committee feels that, in view of the fact that adoption simulates nature, the adopted son should have all the rights of a natural son, and that there is no reason for making any difference between Dwijas and Sudras any longer in respect of the matter under consideration. The adopted son loses all the rights in the family of birth.

तस्मिंश्चेत्प्रतिगृहीते औरस उत्पद्येत चतुर्थ भागभागीस्याद्दत्तकः ॥

[Vasishta]

When he was adopted, there could have been no natural son of the adoptive father. It is to say the least, eminently proper that in these circumstances he should be allowed to share equally with an afterborn son or sons. The Committee therefore recommends that where after an adoption a son or sons are born to the adoptive father, the adopted son should have the same rights as such son or sons for all purposes, whether among Sudras or the twice-born classes. A provision to this effect has been made in the Bill drafted by the Committee.

CHAPTER V.

Women's Full Estate.

An account of the development of the law relating to stridhana makes sad reading. Unlike in other branches of Hindu Law, the dynamics of life have not resulted in any beneficial or progressive interpretation of texts. The liberalising mind which is so essential to relate law to life and keep the former in line with changing conditions of society has been noticeably absent. On the other hand, there has been a retrograde tendency, and even the accepted authority and greatness of Vijnaneswara has not stood in the way of a refusal to accept his views on stridhana. In 1866, the Privy Council freely admitted that they did not have the whole Mitakshara before them, and doubted if the widow's disabilities may not be dealt with in other parts of that work (*Mussamat Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 139 at 173). There was no similar justification for later decisions which have also rejected Vijnaneswara's view on this particular subject. In 11 M. I. A. 139, the only point decided was that a childless Hindu widow " had no power of disposition over the immoveable property inherited from her husband, whether ancestral or acquired ". In fact it was clearly stated, " The result of the authorities seems to be, that although according to the law of western schools the widow may have a power of disposing of moveable property inherited from her husband, which she has not under the law of Bengal, she is by the one law, as by the other, restricted from alienating any immoveable property which she has so inherited and that on her death the immoveable property and the moveable if she has not otherwise disposed of it pass to the next heirs of the husband ". Nevertheless, one year later, it was decided by the Privy Council that " according to the law of the Benares School notwithstanding the ambiguous passage in the Mitakshara, no part of her husband's estate, whether moveable or immoveable, to which a Hindu widow succeeds by inheritance, forms part of her stridhana or particular property ". (*Bhugwandeen Doobey* v. *Myna Bee* 11 M. I. A. 487 at 513). A few years later, hte Board decided that under the law of the Mitakshara a daughter's estate inherited from the father is a limited and restricted estate only and not stridhana, and that upon her

death the next heirs of her father succeeded thereto (*Chotay Lal* v. *Chunnolal*, 1878, 6 I.A. 15).

The Madras High Court in *Salemma* v. *Lutchmana Reddy*, I. L. R. 21 Mad. 100 at 103, observed that "no doubt judicial decisions have established that property inherited by a woman is, notwithstanding the opinion of Vijnaneswara to the contrary not stridhan. But these decisions do not go the length of holding that Vijnaneswara's doctrine as to stridhana is otherwise unsustainable"; and in *Subramanian Chetty* v. *Arunachellum Chetti*, I. L. R. 28 Mad. 1 at 6-7 the same High Court stated that "no doubt it is now settled that notwithstanding Vijnaneswara's authority, property inherited by a female from a male or a female would not pass to her own heirs, that is to say, the woman so inheriting takes a limited and qualified estate with reverter annexed to it. But there is no reason for going further and holding that property vesting in a woman otherwise than by inheritance is also subject to such a devolution after her death". In view of the subsequent decisions of the Privy Council, the above opinion can only be stated to be unduly optimistic, because time and again, stage by stage, as it were, Vijnaneswara's views have been rejected. For instance, in *Sheo Shankar Lal* v. *Debi Sahai* (I. L. R. 25 All. 468), the Privy Council decided that no distinction could be drawn, consistently with the text of Mitakshara, between what has been inherited from a male and what has been inherited from a female, and the former having been held by earlier decisions not to be stridhana the later should also be considered as not stridhana for purposes of inheritance. In *Sheo Partab Bahadur Singh* v. *The Allahabad Bank* (I. L. R. 25 All. 476), the Board decided that even in respect of the nature of the estate taken, property inherited by a female from another female was not stridhana. It is but necessary to refer to one more case, *Debi Mangal Prasad* v. *Mahadeo Prasad*, I. L. R. 34 All. 234, where it was held that the principle upon which cases relating to inheritance have been decided appeared to be a safe guide in dealing also with cases of partition, and that therefore the share which a mother in a joint Hindu family obtains after the death of the father on partition is not her stridhana and passes on her death to the heirs of her husband and not to her own heirs.

It would have been understandable even after the decision in 11 M. I. A. 139 if courts had proceeded on the basis that the text of the Mitakshara being explicit,

though a part of it relating to inheritance from the husband of immoveable property had been rejected by the Privy Council, the rest at least should be given effect to. On the other hand the courts have proceeded on the basis that a part of the text having been negatived, the entire text should be rejected.

The Text of Yajnavalkya on which Vijnaneswara has commented runs as follows :—

" ಪಿತೃ ಮಾತೃ ಪತಿ ಭ್ರಾತೃ ದತ್ತಮಧ್ಯಗ್ನ್ಯುಪಾಗತಮ್ ।
ಅಧಿವೇದ ನಿಕಾದ್ಯಂಚ ಸ್ತ್ರೀಧನಂ ಪರಿಕೀರ್ತಿತಮ್ ॥"

—II, 143.

[What was given (to a woman) by the father, the mother, the husband or a brother or received by her at the nuptial fire as also what was presented to her on supersession (on her husband's marriage to another wife) or any other (Adyancha) is denominated 'Stridhana'.]

The commentary of Vijnaneswara on the use of the word 'Adya' in the above text is as follows :—

" ಅದ್ಯಶಬ್ದೇನ ರಿಕ್ಥಕ್ರಯ ಸಂವಿಭಾಗ ಪರಿಗ್ರಹಾಧಿಗಮ
ಪ್ರಾಪ್ತಂ ಏತತ್ ಸ್ತ್ರೀಧನಂ ಮನ್ವಾದಿಭಿರುಕ್ತಂ ।
ಸ್ತ್ರೀಧನ ಶಬ್ದಶ್ಚ ಯೌಗಿಕೋನ ಪಾರಿಭಾಷಿಕಃ,
ಯೋಗಸಂಭವೇ ಪರಿಭಾಷಾಯಾ ಅಯುಕ್ತತ್ವಾತ್ ॥

—Mitakshara II, XI 2-3.

[And as indicated by the word—Adya—'any other'—also property which she may have acquired by inheritance, purchase, partition, seizure or finding are denominated by Manu and the rest 'Stridhana'. The term 'Stridhana' conforms to its import with its etymology and is not technical; for if the literal sense is admissible a technical acceptation is improper.]

In the very next passage speaking of Manu's enumeration of only six sorts of woman's property, Vijnaneswara says that such enumeration is intended not as a restriction of a greater but a denial of a less (Mitakshara II, XI,

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पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् ।
आधिवेदनिकाद्यं च स्त्रीधनं परिकीर्तितम् ॥

[Yajnavalkya, II, 143]

आद्यशब्देन रिक्थक्रय संविभाग परिग्रहाधिगम प्राप्तं एतत्स्त्रीधनंमन्वादिभिरुक्तम् । स्त्रीधन शब्दश्च यौगिकोन पारिभाषिकः । योगसम्भवे परिभाषाया अयुक्तत्वात् ॥

[Mitakshara, II, XI, 2-3]

As Dr. Banerjee observes, "nothing can be clearer or more simple than the above explanation of what constitutes stridhana. The author's explanation can be summed up in these few words, namely, that stridhana conformably to its derivation, means property of any description belonging to a woman" (T.L.L. p. 330).

In spite of these clear and unequivocal statements in the Mitakshara, it has been contended that the effect of Vijnaneswara's wide interpretation of the term 'stridhana' is neutralised by a woman's want of independence and by a distinction in the order of succession to stridhana, because it is stated that the question whether any property ranks as stridhana really resolves itself into two other questions, firstly whether she has absolute power of disposal over it, and secondly whether it descends to her heirs. In *Sheo Shankar Lal* v. *Debi Sahabi*, I. L. R. 25 All. 468, the Privy Council observed—"The author of the Mitakshara and some other authors seem to apply the term (stridhana) broadly to every kind of property which a woman can possess from whatever source it may be derived. Their Lordships do not propose to dwell upon this particular question. It may perhaps be regarded as one mainly of phraseology, not necessarily involving, however it be answered, much distinction in the substance of the law; for most of the old commentators recognize with regard to the property of a woman, whether called stridhan or by any other name, that there may be room for differences in its line of descent according to the mode of its acquisition" (p. 472.)

It is no doubt true, that to merely call a property as stridhana but to limit the woman's power of disposal or to make it descend not to her heirs but to that of the last full owner would be a play on words, and would, just as well defeat the scheme of Vijnaneswara as a refusal to recognize his definition of stridhana. But in the circumstances, one would have thought that any answer to these questions could be had only by a reference to the Mitakshara itself in its entirety. If this is done it would be seen, firstly that the Mitakshara is silent about a woman's powers over stridhana and, secondly that apart from *sulka*, only one order of succession for stridhana has been enumerated. In other words, there appears to be nothing in the Mitakshara itself to support the theory that Vijnaneswara, by giving a non-technical meaning for the term stridhana, did not intend to liberalise the law.

It may be, as Dr. Jolly postulates, that texts under which a woman's power over property is restricted were not unknown in the epoch of Vijnaneswara (see for instance Apararka), and he omits to quote them because they were well-known, and that in any case they were not necessary for elucidation of the Yajnavalkya Smriti, which contains nothing corresponding to them (T. L. L. page 252). On the other hand, it may equally well have happened that by the inclusion, howsoever acquired, of all property belonging to a woman under the term 'stridhana', he considered that all the incidents of stridhana would automatically attach to all property of a woman and did not consider it necessary to proceed further in that direction. At any rate, it is unfortunate that if an explanation had *ex-post facto* to be sought for his silence, it should have proceeded on lines unfavourable to the woman.

The husband's rights over the wife's property which have been so much stressed in the early texts have added to the confusion. If it is remembered however that, on the other hand, the wife also had corresponding rights in the husband's property, it becomes clear at once how invidious has been the subsequent development of the law by which, while the wife's right in the husband's property has been allowed to fall into desuetude, the rights of the husband in the wife's stridhana have been perpetuated.

In regard at least to Vijnaneswara's treatment of succession to stridhana, the following remarks of Dr. Banerjee about property inherited by a woman are entitled to great weight and applicable equally to all property of a woman howsoever she may have come by it.

> "Another argument against the view that property inherited by a woman is not her stridhana is deducible from the utter absence in the Mitakshara of any distinct provision concerning succession to such property. The Hindu Law recognises only two orders of succession, namely, that for property belonging to a male owner and that applicable to stridhana. Now, property inherited by a female is evidently not of the former description; and if, according to Vijnaneswara it were likewise not of the latter kind, he would either have laid down a separate order of succession for it, or like Jimutavahana and Sri Krishna have declared that such property upon the death of the female owner, reverts to the next heirs of the last full owner. Vijnaneswara has, however, made no such provision; but on the contrary, after declaring that the term 'stridhana' is used in its unlimited literal sense and that it includes inherited property, he says, "A woman's property has

been thus described. The author next propounds the distribution of it". (Mitakshara Ch. II, sec XI.) The inference from this is obvious " (*T.L.L. p. 350-351*).

In Mysore, the High Court has often held that it was not bound by the decision of the Privy Council (24 M.H.C.R. 249), and in fact in a number of instances the Hindu Law as administered is different from that laid down by the Privy Council. Even in a very recent case *Adam Hajee Ebrahim Sait* v. *Sulaiman Mahomed Sait* (49 Mys. H.C.R. 301), Venkataramana Rao, C. J. observed—" So far as this court is concerned we are not bound by the decision of the Privy Council " (p. 315). It has also to be remembered that in Mysore the Mitakshara is held in special veneration. In *Kesava Dixit* v. *Rama Dixit* (51 Mys. H.C.R. 301), the Mysore High Court, after a detailed examination of relevant authorities, came to the conclusion that at about the time Vijnaneswara flourished as a contemporary and protege of the great Chalukya King Vikramaditya VI, Mysore was under the rule of that King, so that there could be no doubt whatever that the Hindu public in Mysore were governed by the law contained in the Mitakshara.

It was thus possible for Courts in Mysore to have followed Vijnaneswara more faithfully than the Privy Council. But it cannot be said that they have done so.

The Committee, however, feels that it is unnecessary to-day to undertake any detailed examination of either the Mitakshara or the subsequent development of the law relating to stridhana. The Act of 1933, which is the law governing this branch of the law to-day in Mysore, has gone a long way towards emancipating women and placing their rights on a fair basis, more in accord with the notions of Vijnaneswara. The Committee has therefore limited its enquiry to the law as contained in the 1933 Act, and has sought to find out if the law as therein contained requires any modification in the light of the present day conditions.

The first objection that strikes any one who reads the definition of ' Stridhana ' contained in section 10 of the 1933 Act is the reference to ' limited estate '. The definition reads, " Stridhana means property of every description belonging to a Hindu female, other than property in which she has, by law or under terms of an instrument, only a limited estate ". In other words, apart from limited estates created by an instrument,

stridhana, according to this definition is property other than property in which a woman has by law a limited estate. But if section 16 is looked into to find out what, according to this Act, would be property in which a woman takes a limited estate, we are referred back to section 10. Section 16 reads, " In property other than stridhana as defined in sections 12 and 13 (this is a misprint for sections 10 and 11 due to a change made in the original Bill as drafted by the 1929 Committee, before being enacted into law) a female shall take a limited estate ".

Referring to clause 12(1) of the Bill which later emerged as section 10(1) of the 1933 Act, the Committee appointed in 1929 stated that " it is based essentially on the Mitakshara definition, but it excludes property in which a female has only a limited estate. The last is a point in itself easily determined ".

The Committee, however, feels that any definition of 'stridhana' should be a self-contained one, without reference to Hindu Law or to limited estates.

Coming to the merits of the definition, it is seen that in addition to this definition, section 10 has another sub-section which includes within the definition of stridhana a number of items of property. Of these, the only clause requiring notice is clause (g). This clause runs as follows :—

> " Stridhana includes—
>
> (g) property taken by inheritance by a female from another female and property taken by inheritance by a female from the husband or son or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time property is so inherited ".

The clause in the Bill drafted by the Committee of 1929, which corresponds to this clause in the 1933 Act, was only as follows :—

> " (g) Property taken by inheritance by a female from another female or from her husband or son, or from a male relative connected by blood ".

Further, that Committee in speaking of a woman's limited estate had provided in the Bill drafted by it that " 18— A female inheriting property belonging to a Hindu male dying intestate shall have therein a full estate if she was related to the deceased either by blood, that is to say, through descent from a common ancestor or as his widow or mother and in any other case a limited estate ". In

drafting these provisions, that Committee intended that a female inheriting property from another female should take it absolutely. In regard to inheritance from a male, that Committee intended that, when the female heir is not related to the deceased male owner by blood, or as his widow or mother, she should take only a limited estate; and that in all other cases of inheritance from a male she should take a full estate.

When the Bill drafted by that Committee was under the scrutiny of a Select Committee of the Legislative Council, the Select Committee considered that "in cases where the propositus has left a daughter or daughter's son at the time the succession opens, the widow or the daughter, who takes as heir, should get only a limited estate so that the property passes on after her to the next heir who is a very close descendant of the propositus" (Report of the Select Committee; Appendix to Mysore Legislative Council Proceedings for December, 1932). Clause (g) was therefore amended and recast in the form in which it has finally emerged in the 1933 Act. Clause 18 was also amended and finally emerged as the present section 16.

When this change to clause (g) made by the Select Committee was under discussion on the floor of the Legislative Council, one member moved by way of amendment that the original clause should be retained without the change suggested by the Select Committee. The motion was, however, negatived only three voting for it (*Vide* proceedings December 1932 p. 516).

As the 1933 Act now reads, a woman takes a limited estate only in these cases:—

(i) Where a wife inherits and a daughter or daughter's son is alive;

(ii) where a daughter inherits and a daughter's son is alive;

(iii) where a woman inherits from a male relative not connected by blood, like the widow of a predeceased son, etc.

The last class of cases was one which the Committee of 1929 itself considered as appropriately coming under the class of limited estates. The first two, which were introduced by the Select Committee, as noticed already, was intended to safeguard the interests of a daughter or daughter's son who are close descendants of the propositus.

The first question, to which the Committee naturally addressed itself, was whether the notion of limited estates should not be altogether abolished and all property of a woman however acquired declared to be her stridhana. There is no need to-day to consider the much misunderstood theory of Vijnaneswara on the point. The question has to be examined with respect to the present conditions of Hindu society and considerations of practical expediency. In another part of this Report, the Committee has recommended that the notion of joint family should be preserved. This imposes certain salutary limitations upon any unrestricted power of alienation by a coparcener. It is not unreasonable then to examine if in any particular case, some such limitation should not be imposed upon any unrestricted right of alienation by a woman. The question whether there should be any class of limited estates has to be examined, not with reference to what may be termed an academic discussion of the question, but by an examination of the merits of each individual case and with reference to considerations specially affecting it. The Committee, however, took care in making such examination, not to enlarge the scope of limited estates beyond those preserved by the 1933 Act, but on the other hand to see if those estates may not be reduced to the lowest minimum. In other words, the Committee proceeded on the basis that all property of a woman should be considered as her stridhana howsoever she may have acquired it, and that it is only those cases which, by reason of any special circumstances, required some limitation that should be taken out of that category.

Proceeding on this basis, it will be seen that the three classes of limited estates noticed above are the only ones now in existence which require consideration.

The first and the second relate to an estate taken by inheritance by a widow or daughter, when a daughter or daughter's son is in existence. These two cases were put in by the Legislative Council when the original Bill was before it. It is difficult to dispose of the just and reasonable expectations of a daughter or daughter's son on the short ground that "It is one of the stock arguments against all change, and in the extreme form in which it is usually urged deserving of very little consideration" (Report of the 1929 Committee pp. 128-129). The 1929 Committee in making this observation may be presumed to be speaking of reversioners generally, and may not have had in view the special cases of a daughter or daughter's son.

The daughter has always occupied a special position among the women who are related to the last male owner. According to Vijnaneswara, a maiden daughter is entitled along with her brothers to a share in the joint estate (Mitakshara I, VII, XIV). The views of Asahaya and Medhatithi are the same. In fact, the 1933 Act entitles her to a share at a partition of the joint family property. One of the recommendations of the Committee has been that an unmarried daughter should succeed to the separate property of her father simultaneously with the widow and son. A daughter is as closely related to the father as the son. In the circumstances, it is difficult to say that any expectation she may entertain in her father's property is not just or reasonable.

A daughter's son is also in a special position. The prominence of the Putrika Putra, or the son of an appointed daughter, is an indication of the usage once in vogue which was all in his favour. In fact, as Mayne observes, " His equality in status with the Aurasa son both for spiritual and temporal purposes was established from the earliest times " (10th Edition, p. 192). While this observation was with reference to the Putrika Putra, it gives an idea of the special affection with which a daughter's son was regarded. His position is not that of a mere reversioner whose claims in competition with an intermediate holder would not be entitled to any weight. It may also very well happen that the daughter's son is by another wife or daughter than the one who actually succeeds, and it will be difficult in such a case to hold that natural affection protects him.

The Committee could not also ignore the fact that the change in favour of the daughter and daughter's son was made by the Legislative Council, after the members had had the advantage of studying the report of the 1929 Committee. Nor does the balance of considered opinion as disclosed in the replies to the Questionnaire issued by the Committee disclose the need for abolishing limited estates in the cases now under consideration. On the other hand the balance of opinion, particularly the opinions of persons who by reason of their skilled knowledge are entitled to great respect and carry weight, seems to be in favour of retaining limited estates in these two cases.

The Committee has, therefore, after deep consideration come to the conclusion that, where a widow inherits and a daughter or daughter's son is alive, or where a daughter inherits and a daughter's son is alive, the estate

taken should be a limited estate. At the same time, the Committee has taken note of the fact that this limitation is intended only for the protection of the daughter or daughter's son, and that where the daughter or daughter's son predeceases the widow or daughter as the case may be, there would be no longer any justification for limiting the powers of the widow or daughter in respect of the property inherited. Further, the existence of the daughter or daughter's son in order to limit the estate should be existence at the time the woman inherits.

There is one other class of estates to which reference must now be made. This relates to property acquired by a woman under an instrument which confers a limited estate. It appears proper that in such a case the estate should be limited in accordance with the terms of the instrument. A woman should not be allowed to take the property ignoring the limitations imposed by the very instrument under which she acquires the property. The Bill drafted by the 1929 Committee and the 1933 Act both contain provisions to this effect and such a provision has to continue. In no case other than these three does there appear to be any justification for limiting a woman's estate. The other class of cases of limited estate now recognized by the 1933 Act relates to inheritance from a male not connected by blood. In such a case, under the order of succession set out in sections 4 and 5 of the 1933 Act, a woman not connected by blood will inherit only when there are no nearer heirs of the deceased, so that the reasons which apply in the case of a daughter or daughter's son will be inapplicable. Any limitation of a woman's rights in such a case, will be only for the benefit of a reversioner more remote than herself, and does not appear to be called for.

The Committee, therefore, recommends that property howsoever acquired by a woman should be stridhana except only in the following cases :—

1. Where a widow inherits and as long only as a daughter or daughter's son of the husband is in existence;
2. Where a daughter inherits and as long only as a daughter's son of the father is in existence; and
3. Where she inherits under an instrument which confers only a limited estate.

The case of simultaneous succession of a widow and daughter with a son, grandson or great grandson of a male intestate has, however, to be treated as an exception. In

the presence of male issue, a daughter or daughter's son has, at present, no right to any share, not even the expectation of succeeding on any future date. The right of simultaneous succession proposed to be given to a widow or daughter is a new right and none of the reasons which necessitates the retention of the notion of limited estate would apply to this case. In Section 16 as re-drafted by the Committee it has been made clear that the estate inherited by a widow or daughter with a son, grandson or great grandson of the deceased would be stridhana and not a limited estate.

These exceptions, it appears to the Committee, are cases where it is just and proper that a limited estate should be retained. In all other cases, the property of a woman should be treated as stridhana. The Draft Bill proposed by the Committee incorporates these changes.

Section 12 of the 1933 Act relates to the succession to stridhana. Prior to this Act, succession to stridhana varied according as the deceased woman was married or unmarried and according as the marriage was in an approved or unapproved form and it also varied with the species of stridhana. The Act has gone a long way in simplifying the law on this subject and has set out a single line of succession, with some difference as to the order of succession among children and grand children depending on the source from which the stridhana came. In regard to this provision also, the 1933 Act does not represent the recommendations of the 1929 Committee. That Committee had recommended that succession to stridhana should be to daughters, daughter's daughters, daughter's sons, son's sons and daughters of sons, in the order mentioned. In property taken by inheritance, it was provided by way of exception to the above rule that sons and daughters should take simultaneously, and in their absence grand children, male and female, should take it simultaneously. The Select Committee of the Legislative Council to which the Bill was referred observed that " since the stridhana has been substantially enlarged by the addition of property obtained at a partition and by inheritance, and it is desirable to still further simplify the law as regards the classes of stridhana and the nature and devolution of the female's estate in particular classes of stridhana, we are of the opinion that the two courses of devolution as adopted in this Bill are unnecessary and that all stridhana may follow one course of devolution, namely, in the first instance, on her children, male and female, equally and then on her

grandchildren, male and female, equally" (Appendix to L.C. proceedings—December 1932 p. 629). The matter however did not rest there. When the Bill as amended by the Select Committee came up for consideration before the Legislative Council, a motion to the effect that property covered by clauses (*a*) and (*b*) of sub-clause (2) of clause 10, namely, ornaments and apparel belonging to a female and gifts received by her, should devolve according to a different order, namely, daughter, daughter's daughter, daughter's son, son, son's son and daughter, was moved and accepted by the Council. This is the form in which the 1933 Act stands at present.

In the definition of stridhana as now recommended by the Committee, all distinctions depending on the source of the stridhana have been removed, and it appears unnecessary any longer to perpetuate such distinctions by specifying different orders of succession to stridhana depending on such distinction. Secondly, not only are certain women given rights to share in joint-family property but are also recommended to be given rights of simultaneous succession to heritable property of a male. There does not appear to be any need to have an independent line of succession only for gifts or ornaments, when no such distinction is recognized in respect of other classes of stridhana. The Committee considers that, in keeping with the recognition of almost all classes of property as stridhana (excepting the three classes for the retention of which adequate reasons have been furnished already) and in consonance with the recommendation that certain women should be given rights of simultaneous succession to heritable property as well as the right to demand a partition of joint-family property in which she has a right to share, there should be a removal of distinctions between children or grand-children dependent on sex in the matter of succession to stridhana. For these reasons, the Committee recommends that only one order of succession among children and grandchildren should be provided.

The expression 'Children' in this context, according to the explanation at the end of sub-section (1) of section 12, has to be understood as "including illegitimate as well as legitimate children and children born out of wedlock". This explanation was added on the recommendation of the 1929 Committee which made the following observation in that connection:—

> "It seems desirable, on grounds of humanity and justice as of convenience, to do away with the order of precedence between

children born in and those born out of wedlock, in so far as succession to stridhana is concerned. It is, after all, a superficial and unsound view which imagines that sexual morality is promoted and sexual immorality discouraged by the imposition of artificial legal disabilities on the offspring of illicit connections. In any case, the modern tendency of the law is to leave more and more to the individual conscience and to social and public opinion the task of fostering virtue and dissuading from vice."

In this connection, it must be observed that, when the said recommendation was made by the 1929 Committee, there were certain decisions in the Provinces of India under the Mitakshara Law holding that an illegitimate daughter was entitled to succeed to the stridhana of her mother (Vide *Mynabai* v. *Uttaram*, 1864 (2) M.H.C.R. 195 (203), *Arunagiri Mudali* v. *Ranganayaki Ammal*, (1897) 21 M. 40, and *Dundappa* v. *Bhimavva*, (1920) 45 B. 557.). J.C. Ghose, in his Hindu Law III Edition, at page 763 has also observed thus :—

"According to Hindu Law, an illegitimate child is not the child of the father but only of the mother, and can thus have no relations or rights to inheritance except to the mother's property".

A similar principle was also observed in the Roman Law which recognized the relationship between an erring mother and her offspring. The 1929 Committee, however, made a departure from the Mitakshara Law in one respect in making the said recommendation, namely, that a woman's children, both legitimate and illegitimate, should succeed simultaneously to her stridhana property and share equally; while, according to the Mitakshara Law as expounded by judicial decisions, the existence of legitimate children would altogether exclude the illegitimate children from inheriting their mother's stridhana. But that provision of the 1933 Act has been in force for over fifteen years and it appears to be unnecessary now to think of effecting any change in it. The Explanation to sub-section (1) of section 12, however, provides only for the case of children. Very recently in *Gangamma* v. *Veerappa*, 52 Mys. H.C.R. 334, the question whether under Hindu Law the Explanation at the end of section 12(1) of the 1933 Act applies to grandchildren also arose for consideration and it was held that the Explanation does not apply to grandchildren. It was thus observed in that case :—

"There also appears to us to be good reason for not extending the principle to the case of illegitimate granddaughters by analogy. It appears to us that there can be no analogy between the case of an illegitimate daughter's right to succeed to the

stridhana of her mother and the right of an illegitimate granddaughter to succeed to her grandmother's stridhana. The right of the illegitimate daughter to succeed to her mother's estate is based on the principle that the erring mother, being responsible for ushering into the world the illegitimate daughter, has to make ample provision for her maintenance, not only during the mother's lifetime but also after her death. It is for that reason that a right was given to the illegitimate daughter to succeed to the mother's estate. That principle cannot apply to an illegitimate granddaughter, because the grandmother does not stand under a similar obligation, either legal or moral, in respect of her illegitimate granddaughter".

The Committee is also of the same view and considers it unnecessary to extend the application of the explanation at the end of section 12(1) of the 1933 Act to the case of grandchildren. It has to be therefore made clear that "grandchildren, male and female" referred to in section 12(1)(i)(ii), will include only legitimate children of children, whether legitimate or illegitimate. Since all the children of a woman, whether legitimate or illegitimate, are permitted to succeed to a woman's stridhana property, it must follow that all the legitimate children of the woman's children, should be given the right to succeed to her stridhana property.

In the order of succession itself as set out in section 12, the Committee desires to make some changes so as to bring it in conformity with nearness of relationship and to make the order more in keeping with natural love and affection. Viewed in this light it appears to the Committee to be desirable to place the mother and father above the husband's heirs. Uterine brothers and sisters should come next after the father but before the husband's heirs. Such an order would accord with the dictates of affection and the Committee accordingly recommends that the order of succession to stridhana should be changed in the manner suggested.

The Committee's recommendations in regard to section 12 involve a slight change in the order of succession to stridhana. It is therefore necessary to provide that the revised order will apply only in respect of the stridhana of an intestate dying after the revised order comes into force.

Section 13 of the 1933 Act is as follows:—

"Any person, male or female, inheriting stridhana property shall take therein a full estate".

In view of the definition of stridhana now recommended by the Committee no such provision appears to be called for. Except in the three cases specifically enumerated

in the revised draft of section 10 prepared by the Committee and appended to this report, all other property of a woman will be her stridhana. That is to say, she will take therein a full estate. The Committee accordingly recommends that section 13 may be omitted.

These several recommendations of the Committee have been incorporated in the darft Bill prepared by it and appended to this Report.

CHAPTER VI.

Women's Limited Estate.

In an earlier part of the report, the Committee has recommended that, in respect of property inherited from a husband or father, a woman should have a limited estate, so long only as a daughter or daughter's son is in existence in the one case and a daughter's son in the other. The considerations which weighed with the Committee in coming to such a conclusion are set out in detail in that part and it is not necessary to go into them once again. It is, however, clear that the doctrine of limited estate having been thus recognized, though in only one or two classes of cases, Part IV of the 1933 Act has to remain. The only questions therefore to which the Committee has addressed itself are as to the changes, if any, which are called for in this part of the Act. The strongest condemnation usually advanced against this doctrine of limited or qualified estate is, that it is responsible for the large volume of litigation arising in connection with alienations by holders of limited estates and the consequent harassment of women. Sir M. Venkatasubba Rao, retired Judge of the Madras High Court, writing in the Golden Jubilee Number of the Madras Law Journal (1941), says, "In the realm of Hindu Law, this rule more than any other has produced grave social injustice. Kinsmen of all sorts swoop down, goodness knows from where, to clutch at the property, and this not only on the death of the woman, as reversioners are permitted by law to harass her even during her lifetime. There is no class of suits which shock a Judge's sense of justice more than suits by reversioners. To mitigate the evil, rules of evidence have been relaxed to protect transfers by Hindu women and the doctrine of necessity has been greatly stretched. Nevertheless, how many titles (some even of sixty or seventy years' standing) have had to be upset and how many homes have been wrecked. To what unending litigation, chicanery and subterfuge does this rule not lead!"

There are two aspects of a Hindu woman's estate which have to be noticed in this context. One is the nature of the estate itself and the other is the rights of reversioners to the inheritance which falls open on the woman's death. It is wholly incorrect to speak of such an estate as one for life, because in certain circumstances

she can give an absolute and complete title. Nor does she hold it in trust for any one. Within the limits imposed upon her, the female holder has the most absolute powers of enjoyment and is accountable to none. As observed by the Privy Council, "Her right is of the nature of a right of property: her position is that of owner: her powers in that character are however limited" (*Janaki Ammal* v. *Narayanaswami*, 1916, 43 I.A. 207). These limitations on her powers, however, are the very substance of its nature and not merely imposed for the benefit of reversioners. These limitations exist even if there are no reversioners, and it is incorrect to say "that in the absence of collateral heirs to the husband or on their failure, the fetter on the widow's power of alienation altogether drops", or "that a widow becomes completely emancipated; perfectly uncontrolled in the disposal of her property; and free to squander her inherited wealth for the purposes of selfish enjoyment" (*Collector of Masulipatam* v. *Cavely Venkata*, 8 M.I.A. 529).

One other distinctive feature of the woman's estate which marks the starting point, as it were, of a reversioner's right is that, at her death, it reverts to the heirs of the last male owner, or to the heirs of the last full female owner in the case of stridhana property, so that a limited owner never becomes a fresh stock of descent. In other words, "Upon the termination of the estate the property descends to those who would have been the heirs of the (last owner) if he (or she) had lived up to and died at the moment of her death" (*Moniram Kolita* v. *Keri Kolitani*, 1880, I.L.R. 5 Cal. 776). It is, therefore, clear that until the termination of such estate it is impossible to say who are the persons who would be entitled to succeed as heirs to the last full owner. At any particular time, however, it would be possible to ascertain who, if the inheritance opened then, would be entitled to succeed to the estate, and he is called a reversioner. His interest will be thus an interest expectant on the death of the limited heir. It is what is termed a *spes successionis*. But since a reversioner can, when the inheritance opens and he succeeds, challenge her acts which are outside the limited powers of ownership which were available to her, the law has permitted the institution of suits in the lifetime of the female owner in two classes of cases, first where she has committed acts which diminish the value of the estate; and secondly, acts which endanger the title of those next in reversion. Such a suit is generally permitted to be brought only by

(Departmental Library)

the reversioner who would succeed if the limited owner were to die at that moment, that is, a presumptive reversioner. But being a suit in respect of an act injurious to the reversion, the suit is in a representative capacity and on behalf of all reversioners. It is in this background that the questions relating to woman's estate have to be examined.

According to the recommendations made by the Committee in an earlier part of the report, a great deal of, if not almost all, the criticisms levelled against the doctrine of limited estate will, it is expected, disappear. Instead of an unidentified, inchoate body of persons called reversioners, the right to succeed when the inheritance opens at the death of the limited owner has been limited only to a daughter or daughter's son of the last male owner. There can be no other reversioner to a woman's estate and if, when the inheritance opens, neither of them is in existence, then the limited owner becomes a fresh stock of descent. The condemnation of the notion of limited estate itself, because of its bringing into existence the doctrine of reverter and the well-known reversioner's suit, loses much of its force in the circumstances. If these reversioners die during the lifetime of the limited owner, that limited ownership gets enlarged into a full estate.

The recommendations relating to Part III of the 1933 Act regarding full estate therefore considerably minimise the hardships with which a woman's estate has till now been associated; and as the Committee has stated already, there are weighty reasons why the estate which a woman takes from her husband or father should be a limited one, if a daughter or daughter's son in the one case and a daughter's son in the other is in existence. Such being the case, the Committee is of opinion that Part IV of the 1933 Act should remain and does not require any material alteration. The rights accorded under Part IV of the 1933 Act to a woman in respect of a limited estate are the utmost that could be given to her, consistently with the just expectations of a daughter or daughter's son.

In the light of these considerations, section 16 will require to be redrafted. It has to be made clear that there will be only two cases where a woman will take a limited estate, in all other cases taking a full estate. The proviso to the existing section 16 which relates to an entirely different topic has to be retained; but it need not

remain as a proviso but could form a separate sub-section. Note has been taken of the fact that a reversioner under the recommendations made by the Committee can be only a daughter or daughter's son, and the necessary verbal changes have been effected in the clause as drafted by the Committee.

The other provisions of this Part of the 1933 Act do not call for any change.

CHAPTER VII.

MAINTENANCE.

The provisions in the 1933 Act relating to "Females entitled to maintenance", is another instance in which the recommendations made by the 1929 Committee did not meet with the full approval of the Select Committee of the Legislative Council which examined the Bill drafted by that Committee. The 1929 Committee had recommended that a Hindu male, whether or not he was possessed of property, should be personally bound to maintain certain female relatives enumerated in the Bill drafted by it. The list of such females was as lengthy as to include 7 separate classes of female relatives.

In the Select Committee, it was "after considerable discussion" agreed that, besides the relatives who are under the Hindu Law legally entitled to maintenance at the hands of a Hindu male, only two others, namely, the step-mother and the unmarried full sister until she attains majority needed consideration, and that he should be bound to maintain them only if he has sufficient means. The clause relating to this subject was accordingly amended in the form in which it is now embodied as section 22 of the 1933 Act. In the Legislative Council, a motion was moved to include the widow of his predeceased son also but the motion was negatived (Proceedings of the Legislative Council, December 1932).

In the earlier part of this Report relating to Inheritance, the Committee examined the case of a widowed daughter-in-law in relation to heirs who should be given the right of simultaneous succession. For the several reasons examined in that connection, it was decided that she need not be given the right of simultaneous succession to the heritable property of her father-in-law. The Committee, however, felt that it was just that she should be maintained by her father-in-law if he possessed sufficient means to do so. The Committee, therefore, recommends that sub-section (1) of section 22 should be amended by including her among the women specified in the sub-section as entitled to maintenance. It is a matter of some satisfaction that, in this respect, one of the recommendations of the 1929 Committee and one of the

suggestions made in the Legislative Council in 1932 will be thus fulfilled.

The Committee desires to take the present opportunity of amending the 1933 Act in order to incorporate a provision for the maintenance of illegitimate children. An illegitimate daughter does not appear to possess such a right, and in the case of an illegitimate son he appears to be entitled to maintenance not merely during his minority, but for life. The Committee considers it necessary to place the matter on an understandable and equitable basis, and accordingly recommends that illegitimate children, whether sons or daughters, should, during their minority, and as of statutory right be maintained by the putative father if he is possessed of sufficient means. It recommends that section 22 may be suitably amended in this behalf. These amendments to section 22 have been indicated in the draft Bill appended to this report.

Sub-section (2) and sub-section (3) of the same section 22, also require to be amended in some respects. Sub-section (2) saddles a person inheriting property of a Hindu male, with the duty of maintaining female relatives who were entitled to be maintained by such deceased. The female relatives so entitled to be maintained are, as set out in sub-section (1) of this section, not only those enumerated in the sub-section but also those others who are legally entitled to maintenance. In the chapter relating to Inheritance, the Committee has recommended that a widow and an unmarried daughter should be entitled to succeed simultaneously with a son to the heritable property of an intestate. It thus becomes evident that, unless sub-section (2) of section 22 is amended, there may well be cases where a woman would be entitled not merely to a share of person's property as heir succeeding simultaneously but also to maintenance by virtue of this sub-section. It has to be made clear that a woman who is entitled to inherit a part of the property of a person, should not be entitled to claim maintenance from any other person who inherits another part of it. The Committee has suggested a proviso to sub-section (2) of section 22 in the draft Bill appended to this report which will carry out this intention.

In exactly similar circumstances, but in relation to joint-family property, the proviso to sub-section (3) of section 22 enacts that a female relative entitled to a share in such joint-family property and who has obtained such

share, should not be entitled to claim maintenance. This proviso should be amended to make it clear that a woman entitled to a share in joint-family property should not wait at her pleasure to get her share separated off, claiming, however, in the meantime a right to maintenance. In such a case where she is entitled to a share her right to maintenance should cease. The Committee, therefore, recommends that the words, " and who has obtained such share ", should be deleted from the proviso. As long as such a woman did not have the right in all cases to separate herself from the family and have her share separated and placed in her possession, it was fair to give her the right to maintenance until her share was so given to her. But now that all such women are given the right to claim partition, it appears reasonable to delete the aforesaid words from the proviso.

Section 23 of the 1933 Act came up for consideration in an indirect way in *Shanthakumar* v. *Veerendrakumariah*, 43 M.H.C.R. 534, and the observations of the High Court in that case suggest that one clause of this section requires some amendment. The question raised in the case was the applicability of the 1933 Act to Jains, and an argument was advanced upon the language of clause (*e*) of section 23 which entitles a wife to claim separate maintenance " when he (her husband) renounces the Hindu religion." It was urged that the use of the words 'Hindu religion' precluded the interpretation finally accepted in the case, that the word 'Hindu' in the Act means a person governed by the Mitakshara school of Hindu Law, and that Jains who follow this law would also be governed by the Act, since such an interpretation cannot be reconciled with section 23(*e*). This argument was met by the observation that the mention only of " Hindu religion " in section 23 may have been by oversight—if it is permissible to suggest that about the Legislature—or there may have been some other reason for not giving this new privilege to anybody but the wives whose husbands renounce the Hindu religion (p. 541). The report of the 1929 Committee does not throw any light on the question, but it seems to be clear that the Committee did not intend to make any distinction between a wife whose husband renounced the Hindu religion and the wife of any other person who, though not professing the Hindu religion, was still governed by the Act. The Committee has no hesitation in recommending that the words " Hindu religion " should be changed to " his religion ",

thus making it clear that, so long as the parties are within the scope of the 1933 Act, it does not matter what a person's religion is which he discards in order to entitle the wife to claim separate maintenance. There is as much justification in the one case as in the other to give a wife the right to separate maintenance, and it is necessary that this point should be placed beyond all doubt by making the amendment now proposed.

In *Nagamma* v. *Puttanarasappa*, 44 M.H.C.R. 392, Clause (*c*) of section 23 came up for examination. One of the arguments advanced related to the expression, "second wife" in this clause. "For example, a strict interpretation of the expression 'second wife' would, according to Mr. Krishnamurthi, deprive a first wife, or a second wife of her rights, if actually the husband had married a third or fourth wife" (399). It was however observed—"When such a question actually comes up it will no doubt be considered; and it is unnecessary to discuss it in this case" (399). However, now that the Committee is recommending amendments to the 1933 Act, it feels that this point may also be placed beyond doubt or argument, and recommends that for the words—"when he marries a second wife", the words—"when he marries again" may be substituted. The Committee feels that there is no need to use both the words, 'marries' and 'wife', as they mean the same thing.

In considering this section 23 the Committee also addressed itself to the question whether, in addition to the several grounds set out therein, there may not be any other grounds on which a wife could, with reason, claim separate maintenance. The Committee felt that once the right to separate maintenance is conceded to a woman in circumstances in which to compel her to live with the husband would be an act of extreme cruelty and unkindness, there may be cases not falling within any one of the several clauses of this section where the same principles required that such a right should be given to her. In fact, in the Questionnaire drafted by the Committee and circulated for public opinion, it was suggested for consideration if a general clause, "or for any other justifiable cause", would not be desirable and serve the purpose in view. When examining the question in further detail, however, it was felt that such a general clause may give room for considerable litigation of a doubtful and very undesirable nature, and that the purpose in view would be better served by

specifically setting out the several circumstances in which the Committee desired that a right of separate maintenance should be made available. After examining these several circumstances, and taking into account the existing provisions of section 23 which are fairly comprehensive, the Committee came to the conclusion that the case of desertion of the wife, that is to say, abandonment without just cause and without the consent of the wife or against her wish, was one other circumstance which could be usefully added to the section. It is a case that will not fall within any of the existing clauses of the section and is one in which, as much as in the cases now specified, a woman requires protection. The Committee, therefore, recommends that a clause to this effect should be added to section 23, and has included a clause for this purpose in the Bill appended to this Report. It may not be inappropriate to mention that even in the Provinces of India, this is a ground for separate maintenance under the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (XIX of 1946), which was passed into law recently (April 1946).

CHAPTER VIII.

APPLICATION OF PARTITION ACT, 1913, AND DEFINITIONS.

A difficulty of some magnitude, which faced the Committee during its examination of the questions relating to simultaneous succession to the heritable property of an intestate, and the right to demand a partition of her share in joint-family property by a woman entitled to such share, was the excessive fragmentation of property which would result therefrom. This is a difficulty which had to be examined with great care, because the average Hindu (by which expression is meant all those governed by the Mitakshara school of law) does not own such extensive immoveable property as would bear partition into several shares without suffering considerable diminution in value or usefulness. Where any share in such property is taken by a woman, even the common family tie will very often be lacking to keep the property together, since such woman might conceivably move into another family, with the result that a division by metes and bounds becomes inevitable. If the property in question happens to be a family dwelling house, such partition and division by metes and bounds would benefit no one and would often result in a considerable fall in value of the entire corpus. In the circumstances, the Committee has come to the conclusion that the application of the Partition Act, 1913, was an inevitable corrollary to the rights now conceeded to women, and recommends that the provisions of section 4 of that Act should apply to immoveable property belonging to a male intestate, a share of which has devolved by succession on a woman, and to immoveable property belonging to a joint-family to a share of which a woman has become entitled. A clause for this purpose has been included in the draft Bill appended to this report. It is considered desirable that such a provision should be added as an independent Part of the 1933 Act, since it affects devolution of property provided for in two different Parts of the Act and would therefore not fit in any of the existing Parts.

The Committee in examining this question was struck by the usefulness of the application of the Partition Act, not only to the cases where a woman's share was involved but also to all other cases where family property had to

be split up into shares. As this would involve an amendment of the Partition Act and is not within the terms of reference of the Committee, it will merely content itself by referring to the usefulness of such an amendment.

It now remains to consider the preliminary Part of the 1933 Act and to examine if any changes in the definitions, either by way of an improvement in language, or by way of any amendment of a substantive character, are called for.

In this Part of the Act, the first question which attracted the attention of the Committee was the extent of the applicability of the Act. Sub-section (1) of section 2 of the Act states that, "the Act applies to persons who but for the passing of this Act, would have been subject to the law of the Mitakshara in respect of the provisions herein enacted." In section 3 (*e*), the expression 'Hindu' has been defined to mean "a person governed by the Mitakshara school of Hindu Law". In effect both these provisions mean the same thing and provide that a person, whether a Hindu or not who would be governed by the Mitakshara school of Hindu Law if this Act had not been passed, will be governed by this Act in respect of matters provided therein. Two such provisions carrying the same meaning had to be put in perhaps, because the word 'Hindu' has been used in certain sections but not in others, and except in regard to section 23 (*e*) to which reference has been made already, the use of the word 'Hindu' in some only of the sections does not carry any special significance, the entire Act applying to all persons who come in under section 2 (1). It would be therefore to simplify the Act considerably, if the Act is stated to apply to Hindus and for purposes of this Act a Hindu is defined "as a person governed by the Mitakshara school of Hindu Law." However, the same result has already been reached by the Mysore High Court in interpreting the existing provisions of the 1933 Act in this respect in *Santhkumar* v. *Veerendrakumaria*, 43 M.H.C.R. 534, and as no change whatever is contemplated in this interpretation the Committee does not consider it necessary to suggest any change in this respect in the wording of the Act.

The Committee has recommended that an adopted son should, as far as possible, be treated for all purposes as an aurasa son, and this recommendation requires some changes in the definitions of 'agnate', 'cognate' and 'relative'. The Committee has accordingly recast

these definitions in a more suitable form and has included therein references to relationship by adoption also. These definitions have been included in the draft Bill appended to this report.

As a result of the recommendations made by the Committee on the subject of stridhana, the entire body of reversioners will get reduced to a daughter or daughter's son of the last male owner. This change will require an amendment of the definition of 'next reversioner' in section 3. Where a daughter is the person next entitled to the reversion and there is no daughter's son in existence, the daughter will get a full estate when she gets it and would thus be in a position to represent the reversion as fully and effectively as a male reversioner entitled to a similar estate. The only section in which the expression 'next reversioner' occurs in the whole body of the Act being section 16, the daughter in the case now considered would be competent to grant a release of her entire interest in the reversion, thus enlarging the woman's estate which precedes her into a full one. On the other hand, where a daughter's son is in existence, the woman's estate preceding the reversion to him, whether it is of a widow or a daughter, would be a limited estate, and the next reversioners would be such daughter and daughter's son, or daughter's son only. The definition of 'next reversioner' has been recast to take note of these changed circumstances resulting from the recommendations relating to stridhana, and the recast definition has been included in the Bill appended to this report.

There are two definitions in the 1933 Act which appear to the Committee to be unnecessary and require to be omitted. One is the definition of the word 'ancestor'. This expression occurred in sections 4 and 5. In the revised draft of sections 4 and 5 recommended by the Committee, however, this expression has been omitted. It appears unnecessary to retain a definition of this term. The Committee therefore recommends that the definition of 'ancestor' should be omitted.

Similarly, the expression 'issue' will not occur anywhere in the 1933 Act, if the amendments recommended by the Committee are incorporated therein. This definition should also be omitted.

In that part of the report relating to Inheritance, the Committee recommended that it should be made clear that the property in respect of which the order of devolution set out in section 4 would apply should include, not

merely the property of a person who is not a member of a coparcenary, but also the separate property of a member of a joint Hindu family. This recommendation was based on the law laid down in the *Sivaganga case* (9 M.I.A. 539) and will require a new definition of 'heritable property'. It will be necessary also to specify that such devolution would be only in respect of heritable property of which the intestate has not made a testamentary disposition capable of taking effect. The Committee therefore recommends the inclusion in the 1933 Act of two new definitions of 'heritable property' and 'intestate', on the lines indicated in the draft Bill appended to this report.

In section 4 as recast by the Committee, the word "heir" has been used more than once. It appears to the Committee necessary to define the word "heir", and to make it also clear that in order to be a heir entitled to succeed, a person should not only come within section 4 or section 5, but should not also be subjected to any disqualification under the Hindu Law. A suitable definition has been drafted and included in the Bill appended to this report.

In the same section 4, certain heirs are specifically mentioned as half blood. It follows therefore that heirs not so specified are relatives by full blood. Not only is it necessary therefore to define "full blood" and "half blood", but it has also to be made clear that except where specifically referred to as related by half blood, heirs are relatives by full blood. These two definitions, and a statement as suggested above, have been incorporated in the draft Bill appended to this report.

If full effect should be given to the principle for the acceptance of which the Committee has made a recommendation elsewhere, that an adopted son should be treated as an aurasa son for all purposes, it is necessary to have a definition of the word 'son' as including an adopted son also.

The position of an illegitimate son in respect of the several provisions of this Act was one of the questions which the Committee has examined in some detail. So far as succession to stridhana is concerned, the Committee has stated that without entering into the merits of the subject in that context, it does not propose to recommend any change in the explanation to sub-section (1) of section 12. The reluctance to interfere with that provision which has remained on the statute book for over fifteen years and which relates exclusively to the property of the mother has,

however, not stood in the way of an examination of the larger question of an illegitimate son's rights to the property of his father or other collaterals. The Committee is not impressed with the plea put forward by the 1929 Committee in relation to succession to stridhana that "It is after all a superficial and unsound view which imagines that sexual morality is promoted and sexual immorality discouraged, by the imposition of artificial legal disabilities on the offspring of illicit connections. In any case, the modern tendency of the law is to leave more and more to the individual conscience and to social and public opinion the task of fostering virtue and dissuading from vice". The Committee is not prepared to extend any such concession beyond the limits to which the 1929 Committee was referring when making the above observation. When undertaking legislation, it has to be remembered that the normal course of development of law which might otherwise take place so as to be in keeping with changing notions and conditions is arrested, and any change in the law which society may demand or be ripe to receive can only be by further legislation. It has to be only stated that the illegitimate sons in the three higher classes are entitled to nothing but maintenance, and that it is only in certain circumstances that among Sudras he becomes entitled to certain rights in joint family property or to inherit, before one understands how undesirable such a distinction is. In order to reach any conclusion on this question, it may be necessary to examine in detail the law on the point as contained in the original texts. The following is the text of Manu :—

"ದಾಸ್ಯಾಂವಾ ದಾಸದಾಸ್ಯಾಂವಾ ಯಃ ಶೂದ್ರಸ್ಯ ಸುತೋ ಭವೇತ್ ।
ಸೋನುಜ್ಞಾತೋ ಹರೇದಂಶಮಿತಿ ಧರ್ಮೋ ವ್ಯವಸ್ಥಿತಃ ॥"

[Manu IX, 179]

It is translated thus by Max Muller in the Sacred Books of the East, Vol. XXV.—

"A son, who is begotten by a Sudra on a female slave or on the female slave of his slave, may, if permitted by his father take a share of the inheritance; thus the law is settled".

दास्यां वा दासदास्यां वा यः शूद्रस्य सुतो भवेत् ।
सोऽनुज्ञातो हरेदंशमिति धर्मो व्यवस्थितः ॥

[Manu, IX, 179]

Kulluka Bhatta, in commenting upon that text, says.—

"The son of a Sudra born of a Dasi, *i.e.* a female slave of the description mentioned already (in another place), *viz.* one made captive under a standard etc. or of a female slave belonging to a slave, shall, with the father's consent, take an equal share with the sons of a married female. This is the fixed law".

While stating "a female slave of the description mentioned already", Kulluka Bhatta apparently referred to Verse 415 in Chapter VIII of Manu Smriti in which different classes of slaves recognized by the Dharma Sastras are mentioned. The following is the translation of that verse.—

"There are slaves of seven sorts; one made captive under a standard or in battle, one maintained under consideration of service, one born of a female slave in the house, one sold or given or inherited from ancestors and one enslaved by way of a punishment".

It is thus clear from Kulluka's commentary that the son of a particular description of Dasi only gets a share of the inheritance. The corresponding text in Yajnavalkya Smriti is.—

"ಜಾತೋಪಿ ದಾಸ್ಯಾಂ ಶೂದ್ರೇಣ ಕಾಮತೋಂಶ ಹರೋ ಭವೇತ್ ॥"

"Even a son begotten by a Sudra on a female slave may take a share by the father's choice".

The commentary of Vijnanesvara on that verse runs thus.—

"ಶೂದ್ರೇಣ ದಾಸ್ಯಾ ಮುತ್ಪನ್ನಃ ಪುತ್ರಃ ಕಾಮತಃ ।
ಪಿತೃರಿಚ್ಛಯಾ ಭಾಗಂ ಲಭತೇ ॥"

The son begotten by a Sudra on a female slave obtains a share by the father's choice or at his pleasure.

Vijnaneswara then goes on to say that, from the mention of a Sudra in that verse, the son begotten by a man of a regenerate class on a female slave does not obtain a share even by the father's choice nor the whole estate after his death; but if he be docile, he receives only maintenance. It appears to be somewhat strange that, though there is nothing in the abovementioned texts of Manu, Yajnavalkya and Mitakshara to lead to the inference that the word 'dasi' was intended to mean a continuously and

---

(1) जातोऽपि दास्यां शूद्रेण कामतोंऽश हरो भवेत्

(2) शूद्रेणदास्यामुत्पन्नः पुत्रः कामतः पितृरिच्छया भागं लभते ।

permanently kept concubine, and on the other hand Kulluka Bhatta's comment shows that it referred only to a female slave, the courts have held that the illegitimate son of a Sudra is entitled to a share of the inheritance, provided he is the son of a dasi, that is, a concubine in the continuous and exclusive keeping of his father, and he is not the fruit of an adulterous or incestuous intercourse. However, prior to the decision of the Full Bench in *Rajani* v. *Nitai*, 32 C.L.J. 333, the current of authority in Calcutta was in favour of holding that the word 'dasi' was used in the sense of a slave girl. In the said Full Bench case (Sir Nalini Ranjan Chatterjee dissenting) it was held, following the view taken by the other High Courts, that the word 'dasi' is not to be understood in the narrow sense of a slave girl but in the sense of a permanent, continuous and exclusive concubine. Sir Nalini Ranjan Chatterjee, however, in a dissentient judgment supported with considerable force the view accepted as correct in Bengal up to then. Pundit Rajkumar Sarvadhikari, in his Tagore Law Lectures on Inheritance, observes:—

> "As slavery has been abolished in India by Royal authority, we may say in the language of the text-writers that the illegitimate son of a Sudra by a slave woman is prohibited in the present age. The chapter therefore in the text books which treats of the heritable rights of the illegitimate sons of a Sudra by a slave mother is an obsolete branch of Hindu Law".

This observation is not without force, inasmuch as, according to the ancient Smritikaras, the word used for a female slave is 'dasi' while that used for a concubine is 'avaruddha'. Even assuming that 'dasi' may be interpreted as a continuously and permanently kept concubine, there is no apparent reason why the Smritis should have made a distinction between regenerate classes and Sudras as regards the heritable right of illegitimate sons. The following theory was propounded by Seshagiri Iyer J. in *Meenakshi* v. *Muniandi*, I.L.R. 38 Mad. 1144:—

> "The favourable treatment of illegitimate sons of Sudras as regards the right to share in paternal and ancestral property was due to the idea that marriage among them was not so strictly moral and ceremonial as in the case of the higher classes; continuous concubinage was regarded as equivalent to marriage, although the children of this irregular union did not rank equally with those with whose mother there was a formal marriage".

Whatever justification, if any, there might have been for such a theory in ancient days, it cannot hold good at the present day. If modern tendencies could be accurately gauged in this matter, the Committee has no doubt whatever that they would be in favour of refusing to encourage, by statutory recognition, conferment of rights on permanent non-matrimonial connections. The law in this respect should uniformly mark its disapproval, instead of a recognition in the case of only one class of Hindus, of such illicit connections. To speak of the punishment of the offspring for the sins of the parents as unjust is really to confuse the issues, because the Code of Criminal Procedure has made reasonable and adequate provision for maintenance in such cases, and such a provision appears to be sufficient to meet any charge of injustice or unkindness to the illegitimate offspring. The Committee has accordingly come to the conclusion, and recommends, that the definition of the word 'son' should specifically provide that it does not include a dasiputra.

It appears also to the Committee very necessary to include a provision to the effect that words importing the masculine gender should not be understood to include females. In the 1933 Act as well as in the Bill drafted by the Committee, this distinction has been maintained and the usual rule of interpretation cannot apply. The rights of males as well as of women have been kept distinct and treated separately, and in order to avoid possible confusion a provision of this kind appears to be necessary.

These several definitions have been included in the Bill appended to this Report.

S. Venkata Ranga Iyengar,
(Chairman).

P. Mahadevayya.
D. S. Mallappa.
H. Lingappa.
H. Hombe Gowda.
C. Subrahmanya Aiyar.
M. P. Somasekhara Rau.
Yasodhara Dasappa.
R. Venkata Ramaiya.
N. Balakrishnaiya.

G. S. Venkataramana Iyer,
(Secretary).

HINDU LAW WOMEN'S RIGHTS (AMENDMENT) BILL

WHEREAS it is expedient to amend the Hindu Law Women's Rights Act, 1933, for the purposes hereinafter following—

It is hereby enacted as follows :—

Short title.

1. (1) This Act may be called the Hindu Law Women's Rights (Amendment) Act, 194 .

Commencement.

(2) It shall come into force at once.

Amendment of section 3, Act X of 1933.

2. In section 3 of the Hindu Law Women's Rights Act, 1933 (hereinafter referred to as the said Act),

(1) clauses (*b*) and (*f*) shall be omitted;

(2) for clause (*a*) the following clause shall be substituted, namely—

"(*a*) 'Agnate' means a male or unmarried female related wholly through males by blood or adoption and includes wife or widow of an agnate";

(3) for clause (*c*) the following clauses shall be substituted, namely :—

"(*c*) 'Cognate' means a person related by blood or adoption but not wholly through males and includes wife or widow of a cognate";

(*ca*) "full blood" and "half blood"— two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but not by the same wife;

Except where specifically referred to as related by half blood, heirs entitled to succeed to an intestate shall be heirs related to the intestate by full blood.

(4) before clause (*e*) the following clauses shall be inserted, namely :—

"(*da*) 'Heir' means any person, male or female, who is entitled to succeed to the property of an intestate and is not subject to any disqualification under the Hindu Law";

(*db*) 'Heritable property' means property which belongs to a person (whether a member of a joint family or not) in his or her own right and passes by inheritance;

(5) before clause (*g*) the following clause shall be inserted, namely :—

"(*fa*) 'Intestate'—A person is deemed to die intestate in respect of all heritable property of which he or she has not

made a testamentary disposition capable of taking effect;"

(6) for clause (*i*) the following clause shall be substituted, namely: –

"(*i*) 'next reversioner' means at any given time

(1) where the person next entitled to the reversion is a female who would get a full estate on such reversion, then that female;

(2) where the next reversioner is a female entitled to a limited estate, then that female and the next male reversioner; and

(3) in other cases the next male reversioner;

and where there are more next reversioners than one, the whole body of such reversioners".

(7) for clause (*k*) the following clause shall be substituted, namely:—

"(*k*) 'relative' means a person connected by blood or adoption, or by marriage with a person connected by blood or adoption."

(8) after clause (*k*) the following clauses shall be inserted, namely:—

"(*l*) 'son' includes an adopted son but not a dasiputra; and words importing masculine gender shall not be taken to include females".

Substitution of new section for section 4, Act X of 1933. Order of Succession.

3. (1) For section 4 of the said Act, the following section shall be substituted, namely:—

"4(1) The heritable property of a male intestate shall devolve—

(*a*) upon the heirs enumerated in sub-section (2), if any, according to the rules laid down in this section;

(*b*) if there is no enumerated heir, then upon the heir determined according to the rules of preference set out in section 5.

(2) The enumerated heirs referred to in sub-section (1) are:—

(i) Son,
Son of a predeceased son,
Son of a predeceased son of a predeceased son,
Widow,
Unmarried daughter, except where there is no widow or son or son of a predeceased son or son of a predeceased son of a predeceased son in existence when she will take under entry (ii) with other daughters, if any, married or widowed.

(ii) Daughter.

(iii) Daughter's son.

(iv) Mother.

(v) Father.

(vi) Widow of predeceased son.

(vii) Son's daughter.

(viii) Daughter's daughter.

(ix) Brother.

(x) Brother of the half blood.

(xi) Son's son's daughter,
Son's daughter's son,
Son's daughter's daughter,
Daughter's son's son,
Daughter's son's daughter,
Daughter's daughter's son,
Daughter's daughter's daughter.

(xii) Widow of predeceased son of predeceased son.
Widow of predeceased son of predeceased son of predeceased son.

(xiii) Brother's son,
Brother's son's son, where his father is dead.

(xiv) Half brother's son,
Half brother's son's son, where his father is dead.

(xv) Sister.

(xvi) Sister's son.

(xvii) Half sister.

(xviii) Half sister's son.

(xix) Father's mother.

(xx) Father's father.

(xxi) Step-mother.

(xxii) Brother's widow.

(xxiii) Brother's daughter,
Sister's daughter.

(xxiv) Half brother's daughter,
Half sister's daughter.

(xxv) Father's brother.

(xxvi) Father's brother of the half blood.

(xxvii) Brother's son's daughter,
Brother's daughter's son,
Brother's daughter's daughter,
Sister's son's son,
Sister's son's daughter,
Sister's daughter's son,
Sister's daughter's daughter.

(xxviii) Half brother's son's daughter,
Half brother's daughter's son,
Half brother's daughter's daughter,
Half sister's son's son,
Half sister's son's daughter,
Half sister's daughter's son,
Half sister's daughter's daughter.

(xxix) Widow of brother's son,
Widow of brother's son's son.

(xxx) Father's brother's son,
Father's brother's son's son, where his father is dead.

(xxxi) Father' sister.

(xxxii) Father's sister's son.

(xxxiii) Father's father's mother.

(xxxiv) Father's father's father.

(xxxv) Father's step mother.

(xxxvi) Father's brother's widow.

(xxxvii) Father's brother's daughter,
Father's sister's daughter.

(xxxviii) Father's father's brother.

(xxxix) Father's brother's son's daughter,
Father's brother's daughter's son,
Father's brother's daughter's daughter,
Father's sister's son's son,
Father's sister's son's daughter,
Father's sister's daughter's son,
Father's sister's daughter's daughter.

(xl) Widow of father's brother's son,
Widow of father's brother's son's son.

(xli) Father's father's brother's son,
Father's father's brother's son's son, where his father is dead.

(xlii) Father's father's sister.

(xliii) Father's father's sister's son.

(xliv) Father's father's father's mother.

(xlv) Father's father's father's father.

(xlvi) Father's father's step mother.

(xlvii) Father's father's brother's widow.

(xlviii) Father's father's brother's daughter,
Father's father's sister's daughter.

(xlix) Father's father's father's brother.

(l) Father's father's brother's son's daughter,
Father's father's brother's daughter's son,
Father's father's brother's daughter's daughter,
Father's father's sister's son's son,
Father's father's sister's son's daughter,
Father's father's sister's daughter's son,
Father's father's sister's daughter's daughter.

(li) Widow of father's father's brother's son.
Widow of father's father's brother's son's son.

(lii) Mother's mother.

(liii) Mother's father.

(liv) Mother's brother.

(lv) Mother's brother's son,
Mother's brother's son's son, where his father is dead.

(lvi) Mother's sister.

(lvii) Mother's sister's son.

(lviii) Mother's father's mother.

(lix) Mother's father's father.

(lx) Mother's brother's widow.

(lxi) Mother's brother's daughter,
Mother's sister's daughter.

(lxii) Mother's father's brother.

(lxiii) Mother's brother's son's daughter,
Mother's brother's daughter's son,
Mother's brother's daughter's daughter,
Mother's sister's son's son,
Mother's sister's son's daughter,
Mother's sister's daughter's son,
Mother's sister's daughter's daughter.

(lxiv) Widow of mother's brother's son,
Widow of mother's brother's son's son.

(lxv) Mother's father's brother's son,
Mother's father's brother's son's son, where his father is dead.

(lxvi) Mother's father's sister.

(lxvii) Mother's father's sister's son.

(lxviii) Mother's father's father's mother.

(lxix) Mother's father's father's father.

(lxx) Mother's father's brother's widow.

(lxxi) Mother's father's brother's daughter,
Mother's father's sister's daughter.

(lxxii) Mother's father's father's brother.

(lxxiii) Mother's father's brother's son's daughter,
Mother's father's brother's daughter's son,
Mother's father's brother's daughter's daughter,
Mother's father's sister's son's son,
Mother's father's sister's son's daughter,
Mother's father's sister's daughter's son,
Mother's father's sister's daughter's daughter.

(lxxiv) Widow of mother's father's brother's son,
Widow of mother's father's brother's son's son.

(3) Among the heirs enumerated in sub-section (2) those included in one entry shall be preferred to those in any succeeding entry, while those included in the same entry shall take together in equal shares (*per capita*) except those included in entry (i) who shall take in accordance with the rules set out in sub-section (4).

(4) (*a*) The distribution of an intestate's property among his heirs included in entry (i) of sub-section (2) shall take place according to the following rules namely—

(i) The intestate's widow, or if there is more than one widow, all the widows together shall take two shares;

(ii) Each son of the intestate shall take 4 shares;

(iii) Sons, sons of predeceased sons and sons of predeceased sons of predeceased sons shall take per *stirpes*;

(iv) Each of the intestate's unmarried daughters shall take one share.

(*b*) Two or more widows or two or more daughters succeeding to property under entry (i) of sub-section (2) shall succeed as

tenants-in-common without the right of survivorship in respect of such property.

(5) For the purposes of sub-section (2) any pre-deceased wife of a widower who adopts shall be deemed to be the step-mother of the adopted son."

(2) This section shall only apply to succession to the heritable property of a male intestate dying after the commencement of this Act.

Substitution of new section for section 5, Act X of 1933.

4. (1) For section 5 of the said Act, the following sections shall be substituted, namely :—

General rules as to order of preference.

"5. In the absence of the heirs enumerated in sub-section (2) of section 4, the order of succession to the heritable property of a male intestate shall be regulated by applying the following rules :—

(1) A nearer line shall exclude one more remote.

Explanation—The descendants of the propositus constitute a nearer line than those of the father, the descendants of the father a nearer line than those of the grandfather and so on. On failure of the descendants of the agnatic line the order of preference will be the line of descendants of the mother's father, then the line of the descendants of the mother's father's father and so on.

(2) Within each line limited as aforesaid, agnates shall be preferred to cognates irrespective of degree.

(3) Among agnates, and likewise among cognates, heirs nearer in degree to the propositus shall exclude those more remote.

(4) In the absence of any ground of preference as herein provided, heirs of the same degree reckoned from the propositus shall take equally.

Heirs who are not related.

5A. If there is no heir entitled to succeed under section 4 or section 5, the heritable property of a male intestate shall devolve in the first instance, upon his preceptor, if there is no preceptor upon the intestate's disciple and if there is no disciple, upon the intestate's fellow student.

Explanation—For the purposes of this section, the imparting or receiving of purely religious instruction in the house of the preceptor or of the same preceptor as the case may be, shall alone be taken into account."

(2) This section shall only apply to succession to the heritable property of a male intestate dying after the commencement of this Act.

Amendment of section 6 and section 7, Act X of 1933.

5. For the words 'member' or 'members' wherever they occur in section 6 and section 7 of the said Act, the words 'coparcener' or 'coparceners' shall be substituted.

Substitution of new section for section 8, Act X of 1933.

6. For section 8 of the said Act, the following section shall be substituted, namely :—

Certain females entitled to shares at a partition.

"8. (1) Except in cases to which sub-section (2) applies, the following females shall be entitled to shares in accordance with the rules laid down in sub-section (4) in the property of the joint family of which they are members :—

(*a*) mother of a coparcener, where her husband is dead.

The father's mother and the father's father's mother, where their husbands are dead, shall also be entitled to a share each equal to the share which a mother would get under this section.

Exception—The widow of a predeceased son and the widow of a predeceased son of a predeceased son of a coparcener who is alive shall not be entitled to a share in the joint family property, if a lineal male descendant of her husband, who is a member of the coparcenary, is in existence.

(*b*) widow of a coparcener who has left no son or lineal male descendant who would, if in existence on the material date, have been a coparcener;

(*c*) unmarried daughter of a coparcener who is dead and has left no son who would, if in existence on the material date, have been a coparcener;

(*d*) unmarried daughter of a coparcener who is alive where the coparcenary consists only of that coparcener and his lineal male descendants;

(*e*) unmarried sister of a coparcener whose father, or paternal grandfather, or paternal great grandfather is not alive on the material date.

(2) Where property of a joint family passes to a sole coparcener by survivorship, the following female members of that family shall be entitled to shares in such property in accordance with the rules laid down in sub-section (4):—

(*a*) His mother.
(*b*) His father's mother and father's father's mother.
(*c*) His unmarried daughter.
(*d*) His unmarried sister.
(*e*) Widow and unmarried daughter of his son.
(*f*) Widow and unmarried daughter of his son's son.
(*g*) Widow of his son's son's son.
(*h*) Widow and unmarried daughter of his brother.
(*i*) Widow and unmarried daughter of his brother's son.
(*j*) Widow and unmarried daughter of his brother's son's son.
(*k*) Widow of his brother's son's son's son.

(3) (*a*) Every female entitled to a share in joint family property under sub-section (1) or sub-section (2) shall be entitled to separate herself from the family in the manner specified in section 7 and to have her share separated and placed in her possession and the material date referred to in clauses (*b*) (*c*) and (*e*) of sub-section (1) shall mean the date on which such female has expressed her intention so to separate herself from the family.

(*b*) Such expression of her intention to separate herself from the family shall not affect the status of the other members of the joint family who shall, notwithstanding the expression of her intention or the separation of her share, be deemed to continue to be joint.

(*c*) The right of a female to a share in joint family property under sub-section (1) shall only arise on the date on which she has expressed her intention to separate herself from the family, but the right to a share under sub-section (2) shall arise on the date on which the joint-family property passes by survivorship to the sole coparcener.

(4) The share of a female entitled to it under sub-section (1) or sub-section (2) shall be fixed as follows :—

(*a*) in the case of the widow, one half of what her husband, if alive on the material date, would have received as his share ;

(*b*) in the case of a mother, one half of the share of a son, if she has a son alive on the material date and in any other case, one half of what her husband, if he were alive on the material date, would have received as his share ;

(*c*) in the case of every unmarried daughter or sister, one fourth of the share of a brother if she has a brother alive on the material date, and in any other case one fourth of what her father, if he were alive on the material date, would have received as his share :

Provided that the share to which a daughter or sister is entitled under this clause shall be inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.

(*d*) The share of a female as set out in clauses (*a*), (*b*) and (*c*) shall be fixed by first ascertaining the share which the husband, son, father or brother, as the case may be, would get on the material date or would have got if he were alive on the material date and thereafter assigning to her, her share therefrom ;

(*e*) The material date referred to in clauses (*a*), (*b*), (*c*) and (*d*) shall be the date on which the right to a share arises according to clause (*c*) of sub-section (3).

(5) (*a*) A female, who has taken a share in one capacity of relationship under sub-section (1) or sub-section (2) shall not be entitled to claim a further or additional share in the same property in any other capacity.

(*b*) A female who has succeeded to any share of the heritable property of a male intestate under section 4 shall not be entitled to any further share in such property under this section.

(6) In clause (*a*) of sub-section (1) and in sub-section (2)—

(i) 'Mother' includes step-mother ;

(ii) 'Father's mother' includes father's step-mother ;

and (iii) 'Father's Father's mother' includes father's father's step-mother ;

and where more persons than one included in the same item (i) or (ii) or (iii) above are entitled to a share, they shall together take the share of a mother, a father's mother or a father's father's mother, as the case may be, as tenants-in-common."

Amendment of section 9, Act X of 1933.

7. (1) In section 9 of the said Act,—

(i) for sub-section (1) the following sub-section shall be substituted, namely :—

"(1) In the absence of an express prohibition in writing by the husband, his widow or where he has left more widows than one the seniormost of them may adopt a son to her husband."

(ii) for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) Where an adoption is made by a widow to her husband,—

(*a*) the adopted son shall, if his adoptive father was a coparcener in a joint family, be entitled to all the rights in the property of such family to which a son born of the adoptive father would have been entitled in such property as it stood at the time of the death of the adoptive father and shall also be entitled to such rights notwithstanding that the property of the family has passed by survivorship to a single coparcener:

Provided that he shall not be entitled to reopen any partition among the coparceners of the family which may have taken place between the death of the adoptive father and the adoption and shall not also be entitled to his rights if the property has, before the adoption, devolved from a sole surviving coparcener to his heirs, unless his adoption is made within twelve years from the death of the adoptive father:

Provided further that any transfer of such property made between the death of the adoptive father and the adoption which, on the date of such transfer, was within the competence of the person or persons effecting the same and otherwise valid shall not be liable to be impeached by the adopted son,

(*b*) the adopted son shall, in the heritable property of the adoptive father including property of a joint-family which passed to the father as sole surviving coparcener, be entitled to all the rights to which a son born of the adoptive father would have been entitled at the time of the death of the adoptive father and no transfer of such property made between the death of the adoptive father and the adoption shall be binding on his share in such property but shall to that extent be void:

Provided that if the adoption is made after six years from the death of the adoptive father, any transfer of property made between the death of the adoptive father and the adoption, which on the date of such transfer was within the competence of the heir or heirs effecting the same and otherwise valid shall not be liable to be impeached by the adopted son,

(*c*) if the adoption is made within six years from the death of the adoptive father, the adopted son shall be entitled, in all cases where a son born of the adoptive father would have inherited as nearest heir, to inherit as the nearest heir the heritable property of a relative other than the adoptive father who dies intestate after the death of the adoptive father and notwithstanding that such intestate had died before the adoption;

Provided that any transfer of property made between the death of the relative and the adoption which on the date of such transfer was within the competence of the heir or heirs effecting the same and otherwise valid shall not be liable to be impeached by the adopted son.

(*d*) save as provided in this sub-section, an adoption shall not divest any person of any estate vested in him or her before the adoption."

(2) The provisions of sub-section (i) and sub-section (ii) shall apply only to adoptions made after the commencement of this Act.

Insertion of new section after section 9, Act X of 1933.

8. After section 9 of the said Act the following section shall be inserted, namely :—

Adopted son to have some right as after-born son.

"9A. Where after an adoption a son or sons are born to the adoptive father, the adopted son shall, for all purposes whatsoever, have the same rights as such son or sons."

Substitution of new section for section 10, Act X of 1933.

9. For section 10 of the said Act the following section shall be substituted, namely :—

Stridhana defined.

"10. 'Stridhana' means property of every description, of a female, however acquired, including property taken by inheritance or by devise or at a partition or by gift, from a relative or stranger before, at or after marriage, or by her own skill or exertions or by purchase or by prescription or by any other mode whatsoever, except property in which she takes a limited estate under section 16 and except property acquired by her under an instrument the terms of which confer upon her only a limited estate in which case she shall have an estate limited in accordance with the terms of that instrument."

Substitution of new section for section 12, Act X of 1933.

10. (1) For section 12 of the said Act, the following section shall be substituted, namely :—

Succession to stridhana.

"12. (1) The stridhana of a female intestate shall devolve upon the following relatives of the intestate and in the following order, namely,—

(*a*) Son and daughter.

(*b*) Son's son.
Son's daughter.
Daughter's son.
Daughter's daughter.

(*c*) Husband.

(*d*) Mother.

(*e*) Father.

(*f*) Uterine brothers and sisters.

(*g*) Husband's heirs enumerated in section 4 in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death;

(*h*) Father's heirs enumerated in section 4 in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter's death.

(*i*) Mother's heirs in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death.

Explanation I.—For the purposes of entry (*a*) of sub-section (1) son includes illegitimate son and daughter includes illegitimate daughter and for the purposes of entry (*b*) of sub-section (1) son's son and daughter's son include a legitimate son of a son or daughter, whether legitimate or illegitimate, and son's daughter and daughter's daughter include a legitimate daughter of a son or daughter, whether legitimate or illegitimate.

Explanation II.—For the purposes of sub-section (1) any pre-deceased wife of a widower who adopts shall be deemed to be the step-mother of the adopted son.

(2) Among the heirs enumerated in sub-section (1) those included in one entry shall be preferred to those included in any succeeding entry and those included in the same entry shall take together, except the heirs enumerated in entry (*b*) who shall take per stirpes, that is to say, the grandchildren of each deceased son or daughter shall take the share which he or she would have taken if he or she had been alive at the time of the intestate's death and except the heirs enumerated in items (*g*) (*h*) and (*i*) who shall take in the manner specified in those items".

(2) This section shall apply only to succession to the stridhana of an intestate dying after the commencement of this Act.

Omission of section 13, Act X of 1933.

11. Section 13 of the said Act shall be omitted.

Substitution of new section for section 16, Act X of 1933.

12. For section 16 of the said Act, the following section shall be substituted, namely :—

Limited Estate.

"16 (1) In property inherited by a female :—

(*a*) from her husband who has left no son, son's son or son's son's son, if a daughter or daughter's son of her husband is in existence on the date on which she inherits and as long only as a daughter or daughter's son of her husband is in existence ; and

(*b*) from her father who has left no son, son's son or son's son's son, if a daughter's son of her father is in existence on the date on which she inherits and as long only as a daughter's son of her father is in existence,

the female shall take only a limited estate which shall however become her stridhana, if she survives every daughter and daughter's son in the one case and every daughter's son in the other ".

(2) It shall be competent for a female having only a limited estate in any property to acquire a full estate therein by obtaining from the next reversioner a release of his or her entire interest in such property in her favour."

Amendment of section 22, Act X of 1933.

13. In section 22 of the said Act,

(1) to sub-section (1) the following clauses shall be added :—

"(*c*) his son's widow.

(*d*) his illegitimate child, male or female, until he or she attains majority ";

(2) To sub-section (2) the following proviso shall be added :—

" Provided that a female, who is entitled to a share in such property by intestate succession under entry (i) of sub-section (2) of section 4, shall not be entitled to claim maintenance " ;

(3) In the proviso to sub-section (3) the words " and who has obtained such share " shall be omitted.

14. In section 23 of the said Act,

(1) for clause (*c*) the following clause shall be substituted :—

" (*c*) when he marries again ";

(2) for clause (*e*) the following clause shall be substituted :—

" (*e*) when he renounces his religion " ;

(3) after clause (*e*) the following clause shall be added :—

" (*f*) when he deserts his wife, that is to say, abandons her without just cause and without her consent or against her wish ".

Substitution of new Chapter heading and section after section 26.

15. After section 26 the following new Chapter heading and section shall be added, namely :—

" **PART VI.**

Application of Partition Act, 1913, in certain cases.

Application of Partition Act, 1913, in certain cases.

27. Where a female upon whom a share in any immoveable property of a male intestate has devolved or who has become entitled to a share in immoveable property belonging to a joint family sues for partition, the provisions of section 4 of the Partition Act, 1913, shall apply as if such immoveable property were a dwelling house and as if she were a transferee of a share in a dwelling house and the family of the intestate or the joint family, as the case may be, were an undivided one".

APPENDIX I.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

GENERAL AND REVENUE DEPARTMENTS.

G. O. No. P. 298-311—Cts. 81-44-4, dated 11th July 1945.

Women's Rights in Hindu Law.

Appoints a Committee to enquire and suggest amendments to the Act relating to ——.

ORDER NO. P. 298-311—Cts. 81-44-4, DATED BANGALORE, THE 11TH JULY 1945.

The question of improving the position assigned to women under the Hindu Law of Inheritance was the subject of examination by a Committee appointed in 1929. As a result of the recommendations made by this Committee, the Hindu Law Women's Rights Act, 1933, was passed. This Act has been in force for over 12 years and there is a growing demand for its revision. In December 1944, a resolution was passed by the Legislative Council urging upon the Government the need for the appointment of a Committee to examine, revise and amend the Hindu Law Women's Rights Act, 1933. The High Court, which was consulted in the matter, is of opinion that the appointment of such a Committee is urgently called for to revise the Act in the light of the decisions given by the High Court as well as to bring the law in consonance with the spirit of modern times.

Government agree that there is need for the appointment of such a Committee and they are accordingly pleased to appoint a Committee consisting of—

Mr. Justice S. Venkataranga Iyengar, B.A., LL.M.

Rajadharmapravina Diwan Bahadur Mr. P. Mahadevayya, B.A., B.L. (Retired Chief Justice), M.L.C.

Rajadharmaprasakta Mr. C. Subrahmanya Aiyar, B.A., B.L. (Retired Judge, High Court of Mysore).

Mr. M. P. Somasekhara Rau, B.A., LL.B., Advocate, Bangalore.

Mr. N. Balakrishnaiya, B.A., LL.B., Advocate, Bangalore.

Mr. R. Venkataramaiya, M.A., LL.B., District Judge.

Mr. H. Lingappa, B.A., LL.B., Advocate, Shimoga.

Mr. D. S. Mallappa, M.L.C., Merchant, Tiptur.

Mrs. Yesodhara Dasappa.

Mr. Hombe Gowda, B.Sc., LL.B., Public Prosecutor, Mandya.

Mr. Justice S. Venkataranga Iyengar will be the Chairman. Mr. G. S. Venkataramana Iyer, B.Sc., M.L., Assistant Secretary to Government, Legislation Branch, will work as Secretary to the Committee.

The Committee is requested to suggest suitable amendments to the various provisions of the Hindu Law Women's Rights Act, 1933, so as to resolve the difficulties felt in the interpretation of the existing provisions of the Act and to be in consonance with the spirit of modern times.

The Committee may call for information and opinions from Government officers as well as from members of the Public and Public Bodies and interview and examine witnesses.

All Officers of Government are requested to furnish the Committee with any information at their disposal on requisition from the Secretary to the Committee.

The Committee will meet at Bangalore and the Chairman and five members will constitute a quorum.

The Superintendent, Government Printing and Stationery, is requested to comply with all the requisitions from the Committee for printing and stationery.

C. NARAYANASWAMY NAIDU,
Secretary to Government,
Law Department.

To—The Chairman and Members of the Committee.

The Comptroller to Government of Mysore, Bangalore.

The Superintendent, Government Printing and Stationery, Bangalore.

The Compiler, *Mysore Gazette.*

The Registrar, High Court of Mysore.

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APPENDIX II.

THE HINDU LAW REFORM COMMITTEE, MYSORE.

Questionnaire.

This Committee has been appointed by the Government to suggest suitable amendments to the various provisions of the Hindu Law Women's Rights Act, 1933, so as to resolve the difficulties felt in the interpretation of the existing provisions of the Act and to bring the law in consonance with the spirit of modern times.

The Hindu Law Women's Rights Act came into force in Mysore on the 1st of January 1934. During the 11 years that have since elapsed, several of its provisions have come up for interpretation before courts of law. Valuable suggestions have been made by the High Court in their judgments in cases that came up for decision under the Act. Several difficulties, which arise in the construction of the existing provisions of the Act have also been indicated by the High Court. During the past decade there has been considerable progress in social conditions that renders the amendment of the Act necessary so as to be in consonance with the progressive ideas of the present day. The functions of this Committee are therefore twofold:—

(1) to suggest suitable amendments so as to resolve the difficulties felt in the interpretation of the existing provisions of the Act and clarify the law contained therein ; and

(2) to keep the framework of the Act as the basis and suggest such amendments to the provisions of the Act as may be necessary or desirable so as to bring the Act in consonance with the spirit of modern times.

In order to facilitate the enquiry and to give opportunity to all persons interested to place before the Committee their views on the several matters which will come up for consideration before the Committee as regards the second of the abovesaid functions, a set of questions has been prepared and is published for general information.

The memorandum appended to this questionnaire will indicate the purpose and the scope of the questions included herein.

The answers need not be limited to the precise points covered by these questions. The Committee will welcome any suggestions or expressions of opinion on matters not covered by this questionnaire, but which are within the scope of the enquiry.

It will be appreciated if answers are furnished as early as possible and in any case not later than 15th December 1945 to the address of the Secretary, Hindu Law Reform Committee in Mysore, Public Office Buildings, Bangalore. Copies of the questionnaire may also be obtained on application to that officer.

BANGALORE CITY,
1st November 1945.

S. VENKATARANGA IYENGAR,
Chairman.

(REFERENCES IN THESE QUESTIONS TO THE ACT AND SECTION SHOULD BE CONSTRUED AS REFERENCES TO THE HINDU LAW WOMEN'S RIGHTS ACT, 1933 AND TO SECTIONS OF THIS ACT, RESPECTIVELY).

PART I—Intestate Succession.

Q.—**1.** Are you in favour of providing that certain close relatives of the deceased like son, grandson whose father is dead, great grandson whose father and grandfather are both dead, widow, daughter or any other relative should be given the right to succeed simultaneously to the separate property of a Hindu male dying intestate?

Q.—**2.** If your answer to Question 1 is in the affirmative, who, in your opinion, should be the persons who should be given the right of such simultaneous succession?

Q.—**3.** What, in your opinion, should be the shares that should be allowed to each of the persons whom you specify in reply to Question 2?

Q.—**4** Are you in favour of providing for simultaneous succession of the grand-daughters of a male dying intestate irrespective of whether they are son's daughters or daughter's daughters?

Q.—**5.** Are you in favour of placing son's daughters and daughter's daughters above the mother in the order of succession?

Q.—**6.** Are you in favour of providing that brother's daughters and sister's daughters should succeed simultaneously?

Q.—**7.** Are you in favour of placing daughters of brothers and sisters above the father's mother in the order of succession?

PART II—Partition.

Q.—**8.** Are you in favour of giving women who are entitled to shares in joint family property under sub-section (1) of section 8 a right to demand partition?

Q.—**9.** If your answer is in the affirmative, would you prefer a provision being made to the effect that such a demand for partition or the separation of her share and placing it in her possession shall not disrupt the family and the family shall continue joint notwithstanding such partition or the separation of her shares?

PART III—Adoption.

Q.—**10.** Are you in favour of empowering the widow to make an adoption to her husband in the absence of an express prohibition in writing by him?

Q.—**11.** In cases where an adoption by a widow is valid, are you in favour of recognising the adopted son as an *aurasa* son for purposes of succession to property?

Q.—**12.** If the answer to question 11 is in the affirmative, would you impose on the widow any time limit within which to make the adoption in order not to disturb successions which have already taken place?

PART IV—Stridhana.

Q.—**13.** Are you in favour of abolishing the notion of limited estate and including all property of a female as her stridhana ? If you are not in favour of including all property of a female as her stridhana, are you at least agreeable to deleting the words—" except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited " in section 10(2)(*g*) of the Act ?

Q.—**14.** Are you in favour of having only one order of succession to stridhana ?

Q.—**15.** If so, what order would you suggest ?

PART V—Maintenance.

Q.—**16.** Are you in favour of adding a widowed daughter-in-law in section 22(1) of the Act as one of the persons whom a Hindu male is bound to maintain ?

Q.—**17.** Are you in favour of giving a wife a right to refuse to live with her husband and claim separate maintenance in a case where the husband is a lunatic or an idiot ?

Q.—**18.** Are you in favour of amending section 23 (*e*) of the Act so as to make it applicable to renouncement by a husband of his religion, whatever it may be ?

Q.—**19.** Are you in favour of adding one more clause to section 23 of the Act as follows :—

" for any other justifiable cause " ?

PART VI—General.

Q.—**20.** Are you in favour of making the provisions of the Partition Act (III of 1913) applicable to all cases of division of property arising under this Act ?

Q.—**21.** Are you in favour of a provision preserving to *Dasi Putra* whatever rights he has under the Hindu Law ?

Q.—**22.** If you are not in favour of such a provision, are you in favour of stating that 'son' in the Act does not include a *Dasi Putra* ?

Q.—**23.** Are you in favour of a provision that except in the case of an afterborn son, an adopted son has the same rights under the Act as an *aurasa* son ?

Q.—**24.** Are you in favour of the provision that, if, after adoption, a son is born to the adoptive father, the adopted son should have the same share in the adoptive father's property as a natural born son ?

MEMORANDUM.

PART I—Intestate Succession.

After the Hindu Law Women's Rights Act was passed in Mysore in 1933 and became law from 1st January 1934, efforts are being made in British India by the progressive elements of society to give simultaneous right of succession to certain close relatives of a male dying intestate, based on principles of natural love and affection. Section 4 of our Act sets out the order of succession to the separate property of a male dying intestate. The order follows the rule of consanguinity and propinquity. In the order specified in that section female relatives are given places which were not available to them under the old law. To that extent and considering the state of society and law in 1929, the Committee appointed in that year have gone a very long way in removing inequities based on texts which were considered to be inapplicable or obsolete and in setting out an order of succession more akin to dictates of natural affection and justice, bearing in mind the principle that true Hindu Law followed nature. Mysore was one of the first to give the lead in respect of improving the position of Hindu women as regards their rights to property. We have now reached a stage at which we have to consider whether, as a logical and necessary consequence of the initial step taken by the Committee constituted in 1929 and to bring the law in consonance with the spirit of modern times, action should not now be taken to provide for the simultaneous succession of persons who are dear and near to the propositus or in respect of whom he and his estate would be liable to provide maintenance.

The following is a brief summary of the reasons in support of the proposal to provide for the simultaneous succession of a widow, daughter and son including a predeceased son's son and son of a predeceased son of a predeceased son—Husband and lawfully wedded wife are considered, according to the Hindu Dharma Sastras, as forming one body, the right half representing the husband and the left half the wife. Brihaspathi says: "Of him whose wife is not deceased, half the body survives. How should another take the property while half of the body of the owner lives?" Equality of ownership of both husband and wife in the property of the husband has been distinctly recognized in works on Purva Mimamsa. That is why it is insisted upon that, in sacrifices, both husband and wife should join.

As regards daughters, Manu says:—"A son is even as one's own self and the daughter is equal to the son. So long as she is there as the father's self, how can any other take the property? (*Vide* Chapter IX, Verse 130)." A text of Brihaspathi is also to the same effect when he says: "A daughter like a son springs from the several limbs of a man; how then should any other mortal inherit the father's property while she lives?". Brihat Parasara says: "He, who is the father, is verily the son; equal to the son is the daughter; both son and daughter preserve the father's lineage." The Hindu conception is that a person exists in the shape of a son or daughter. It therefore follows that, according to the Dharma Sastras, a on, a wife and a daughter are recognized as the body of the propositus himself. The word 'son' includes a grandson and a great grandson.

(*Vide* Verse 137 of Chapter IX, Manu, which is as follows:— "Through a son he conquers the worlds; through a son's son he obtains immortality; but through his son's grandson he gains the solar abode.") Simultaneous succession of the abovementioned heirs conforms to standards of natural justice and equity. The notion of simultaneous succession is not foreign to ancient Hindu Law, because according to it, a son, a grandson whose father is dead and a great grandson whose father and grandfather are both dead succeed simultaneously.

Even in other systems of law such as Muhammadan Law, the law relating to Parsees, the English Law, and the Indian Succession Act, wife, daughter and son are under no circumstances excluded from inheritance. In the list of Quoranic sharers under the Muhammadan Law, the widow gets a definite share in the property of her deceased husband and the daughter will either get a share as a legal sharer if the propositus has left no son, or as a residuary with sons of the propositus. According to the Indian Succession Act, where the intestate has left a widow and lineal descendants, 1/3 of his property goes to the widow and the remaining 2/3 to his lineal descendants When a Parsee dies leaving a widow and children, the property of which he died intestate will be divided among the widow and children, so that the share of each son will be double the share of the widow and her share will be double the share of each daughter. According to English Law, after the enactment of the Administration of Estates Act, 1925, if the intestate leaves a wife (with or without issue), the wife takes all the personal chattels absolutely and £ 1,000 free of death duties with interest and if there is issue of the propositus, she takes a life interest in one-half of the property that remains after deducting the personal chattels and the sum of £ 1,000 and what remains must be divided equally among the children who are alive at the death of the intestate as soon as they attain 21 or marry, whichever is the earlier event. The distribution of residue of the property among the children is subject to what is called the 'hotchpot rule,' the purpose of which is to ensure that the shares of all the children should be equal. There is no special reason why, in the scheme of inheritance according to Hindu Law, the daughter should be postponed to the widow and the latter to sons.

The right of simultaneous succession is recognized to some extent in British India in Act XVIII of 1937 as amended by Act XI of 1938. In section 3 of the Act, though the daughter is not included in the group of simultaneous heirs mentioned therein, the principle of simultaneous succession is recognized. Even in our Act X of 1933, the great-grandchildren of the propositus all take simultaneously, Section 4 (xii). As regards the persons to whom the right of simultaneous succession was proposed to be given; in British India, it was suggested in the Bill introduced in the Council of State and Legislative Assembly as amended by the Joint Committee that parents if dependent on the intestate, widow, son, daughter, son and widow of a predeceased son, and son of a predeceased son of a predeceased son should be given the right of simultaneous succession. But finally in the draft Hindu Code, that right is proposed to be given only to widow, son, daughter, son of a predeceased son and son of a predeceased son of a predeceased son; the other simultaneous heirs proposed by the Joint Committee were omitted by reason of the fact that their inclusion would lead to *excessive fragmentation.*

The manner of distribution among simultaneous heirs is suggested as follows in the Draft Hindu Code:—

(*a*) The intestate's widow, or if there is more than one widow all the widows together shall take one share.

(*b*) Each son of the intestate shall take one share, whether he was undivided or divided from or reunited with, the intestate.

(*c*) Sons, sons of predeceased sons, and sons of predeceased sons of predeceased sons shall take the share which would have been taken by him if he had been alive at the time of the intestate's death; and likewise, the grandsons of a predeceased son shall take the share which their father would have taken if he had been alive at the time aforesaid.

(*d*) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

Questions 1 to 3 are therefore suggested for opinion.

In the order of succession set out in section 4 of the Act, daughter's daughters will inherit only after son's daughters. It does not seem to be in consonance with justice and equity to prefer son's daughter to a daughter's daughter. The propinquity or proximity of relationship which determines the position of an heir is the corner-stone of the Mitakshara scheme of succession. Even applying the twin tests, *viz.*, consanguinity determines the heritable right and propinquity the preferable right of kinsmen, there does not seem to be any justification not to treat son's daughter and daughter's daughter equally, inasmuch as both are blood relations and are related to the propositus in the same degree. The mere fact that in the case of son's daughter, there is a male link intervening, while in the case of a daughter's daughter it is a female link, ought not to make any difference in the case of grandchildren who are equally dear and near to the propositus. In this connection, it may be useful to refer to the following opinion of Mr. Justice Varadachariar in his Lecture on "Law and Religion" delivered at the Madras Advocates' Association in connection with the Golden Jubilee Celebrations of the Association:—"The rationalistic principle of inheritance is that the law of intestate succession should, as far as possible, correspond to the probable sentiments of the propositus as to the objects of his bounty and the expectations that may be reasonably entertained by certain of his near relations of help from his estate." They belong to the family or stock of the propositus and should be placed next after the daughter's son on account of the closeness of the tie of blood and affection. That is what was suggested by the 1929 Committee. They are however placed in the Act after parents and widows of predeceased sons. Therefore, questions 4 and 5 have been included.

Similarly, the Chandrasekhara Ayyar Committee had placed brother's daughters and sister's daughters above the father's mother and father's father in the proposed order of succession and as between them had placed the brother's daughter above the sister's daughter. This has been somewhat modified in the Act. For the reasons set out in respect of questions 4 and 5 which apply to this case also, it appears equitable to amend the order of succession and to give brother's daughters and sister's daughters the right of simultaneous succession. Hence questions 6 and 7.

PART II—Partition.

Under section 8 of the Act certain females are given shares at a partition of joint-family property. In Venkatapathiah *Vs.* Saraswathamma, 43 Mys. H.C.R. 361, it has been held, on a construction of section 8 as it stands, that women, who are entitled under the provisions of that section to shares at partition of joint-family property are not entitled themselves to enforce partition. From the language of section 8 as it stands, it is rather difficult to say what the intention of the legislature in respect of that matter was. Though the words "at a partition" support the view taken by the High Court in that case, sub-section (5) of that section.—"Each of the female relatives referred to in sub-section (1) shall be entitled to have her share separated off and placed in her possession" read with proviso (2) to that clause.—"No female whose husband or father is alive shall be entitled to demand a partition as against such husband or father, as the case may be"—may lead to an inference that females referred to in sub-section (1), except a female whose husband or father is alive, are entitled to demand a partition. By denying a right to demand partition, it is possible to conceive of cases where the coparceners by refusing to go to partition could effectively prevent a female from claiming her share. That, in the circumstances, she would be entitled to maintenance may not be a good argument, because that right was available to her even before the Act and the Act will not have conferred any benefit on her in the circumstances. In this connection, reference may also be made to section 3 (3) of the British Indian Act XVIII of 1937 where a widow is given her husband's rights in a joint-family and is given "*the same right to demand partition as a male owner.*" It may however be necessary to provide, in case a female is given a right to demand partition, that the exercise of that right by her will not disrupt the family but will only enable her to have her share separated off and given to her, the other members remaining joint. Therefore, in order to clarify the position, questions 8 and 9 arise for consideration and have been included in the questionnaire.

PART III—Adoption.

It has been held in 42 Mys. H.C.R. 37 that section 9 of the Act merely raises a presumption which is procedural but confers no substantive rights and that it is a rebuttable presumption. Reilly C. J. in that case observed as follows:—"It is perhaps surprising that in a Regulation intended to make amendments in Hindu Law a provision in regard to procedure should have been introduced. But the language of the section shows clearly that the amendment made by it is amendment of procedure." That the Chandrasekhara Ayyar Committee intended to give a substantive right to a Hindu widow to make an adoption, in the absence of an express prohibition by her husband is clear from page 113 of the report where it is stated: "This, however, is not the case as regards the important suggestion that a widow may be empowered to adopt, in the absence of an express prohibition by the husband. There is much to be said in favour of such a rule, which is also obtaining in Bombay, and which, if adopted, will obviate the need for seeking the consent of sapindas." The framers of section 9 evidently intended thereby to empower the widow to adopt. That was a substantive right conferred for the first time by

the Act and as such rightly found a place in the Act. Question No. 10 has been, therefore, put in.

So far as an adoption is made during the subsistence of a coparcenary, there is no doubt that a widow has power to adopt subject to the limiting principle that "when a Hindu dies leaving a widow and son and that son dies leaving a natural issue or adopted son or leaving no son but his own widow, to continue the line by means of an adoption the power of the former widow is extinguished and can never afterwards be revived." Where, however, a coparcenary comes to an end and property vests in a sole surviving coparcener or passes by inheritance after his death, two questions arise for consideration, *viz.*,—

(1) whether the adoption, which has the effect of divesting the estate vested in a collateral is valid; and
(2) if so whether the adopted son can divest the estate vested in the collateral.

The decision of the Privy Council in Amarendra's case, I. L. R. 12 Patna, 642 put an end to the controversy on the first of the above-mentioned two points by deciding that the question of vesting or divesting of property does not determine the power to adopt. They further decided in that case that the adoption divested the estate vested in the collateral. Sir George Lowndes observed as follows:— "Their Lordships think that the vesting of the property on the death of the last holder in some one other than the adopting widow, be it either another coparcener of the joint-family, or an outsider claiming by reverter, or, Their Lordships would add, by inheritance, cannot be in itself the test of the continuance or extinction of the power of adoption." The decision in Amarendra's case was further clarified by the Privy Council in A. I. R. 1943 P. C. 196. In that case it was held as follows:—"The adopted son is the continuator of his adoptive father's line exactly as an *aurasa* son, and an adoption, so far as the continuity of the line is concerned has a retrospective effect: whenever the adoption may be made there is no hiatus in the continuity of the line. Where therefore after the death of a sole surviving coparcener, dying unmarried and issueless his mother-widow adopts a son validly, such an adoption takes effect upon the property which had belonged to the joint-family. That the property had vested in the meantime in the heir of the sole surviving coparcener is not of itself a reason why it should not divest and pass to the adopted son. The sole surviving coparcener's right to deal with the family property as his own would not be impaired by the mere possibility of an adoption. But in his lifetime adoption by the widow of a collateral coparcener would have divested him of part of his interest and the same right to adopt subsisting after his death must have qualified the interest which would pass by inheritance from him."

In recent years in two judgments of the Mysore High Court, Sankaramma *vs.* Krishna Rao, 43 Mys. H. C. R. 415, and Dasappa *vs.* Seshagiri Rao, 43 Mys. H. C. R. 438, though the validity of such an adoption by a Hindu widow was recognized, the resultant effect on property was stated differently from what had been actually held in Amarendra's case. It was held by the learned Judges in those two cases that an adoption made by a widow does not relate back, so far as property is concerned, to the date of the husband's death and a son adopted after the coparcenary has come to an end is not entitled to

a share in what was the property of the coparcenary before it came to an end. In other words, the adopted son cannot divest the property which had already devolved on a collateral heir of the last male owner by inheritance after the extinction of the coparcenary. That view seems to be opposed to the view prevailing in British India and prejudicially affects the rights of an adopted son, as, after the adoption, he loses all his rights in the family of birth. When once the adoption is held to be valid, it should be carried to its logical conclusion and the adopted son should have all the rights of a posthumous son, in which case the adopted son would be entitled to divest the estate vested in the collateral. In this connection, the following observation in A. I. R. 1942 Mad. 338 may usefully be referred to :—"An adopted son must be deemed to be a posthumous son for the purpose of inheritance as if he existed on the date of the death of adoptive father, and a partition made by the coparcener of his father before adoption can be re-opened. Though the title of the adopted son dates back to the death of the adoptive father for inheriting or taking his adoptive father's estate, the only limit to his right of succession is that he takes the estate subject to the dispositions made within the competency of the person who was entitled to hold the said estate until his adoption. Therefore, the adopted son can only take the property which stood undisposed of at the date of the adoption ; but so long as the property was held by the members of the family and remained in the family, the fact that they chose to hold in severalty would not affect the right of the adopted son to claim his legitimate share as appertaining to his adoptive father in the property which was held by them and not validly disposed of". An appeal against this decision was heard by a Full Bench of the Madras High Court. In that case, the Full Bench, while confirming the decision in A. I. R. 1942 Mad. 338, observed as follows :—"In view of these very emphatic pronouncements of the Judicial Committee, an adoption must be taken to date back to the death of the adoptive father, which means that the adopted son is entitled to be put into possession of his adoptive father's share of the family estate, subject, of course, to lawful alienations in the meantime." (A. I. R. 1943 Mad. 43.)

In order that successions, which have taken place, may not be disturbed after the lapse of a number of years, it may perhaps be desirable to fix a time limit for the widow in such cases to make the adoption, say 3 years. Questions 11 and 12 are therefore suggested for answer.

PART IV—Stridhana.

According to section 10 (1) of our Act 'Stridhana' means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate. A female takes a limited estate according to our Act only in three cases :

(1) where a wife inherits and a daughter or daughter's son is alive;
(2) where a daughter inherits and a daughter's son is alive;
(3) where the widow of a predeceased son, grandson or great-grandson or step-mother or brother's widows, widows of brother's male issue to the second generation and similarly widows in the family of the paternal grandfather, etc.,

inherit inasmuch as such widows inherit from a male relative not connected by blood.

With the proposal to grant rights of simultaneous succession to a wife and a daughter, the need to declare estates specified in items 1 and 2 above as limited estates becomes less obvious. The chances of widows referred to in (3) above to inherit the estate of a deceased male Hindu are very remote, as there are a number of nearer heirs, except in the case of widows of predeceased sons. An argument that is advanced in favour of declaring the estates of such widows as limited estates is to see that inherited property in their hands does not pass out of the family but reverts after their lifetime to the members of the family. There does not seem to be much force in that argument, in view of the fact that, according to section 10 (2) (*f*) of the Act, property obtained by a female as her share at a partition is included in 'stridhana' over which she has got absolute power of disposal. It is seen from section 8 (1) of the Act that the widows referred to therein get shares at a partition of joint-family property. When the shares they so get at the partition are treated as stridhana, there is no reason why property taken by inheritance by such widows from male relative unconnected by blood should not also be treated in the same manner. Vijnaneswara, the author of the Mitakshara, rendered yeoman service to Hindu Law by trying to place women on the same legal pedestal as men. He was a Paramahamsa of the highest order to whom soul was sexless. He was also a great social reformer. His work 'Mitakshara' is of paramount authority in Mysore. Taking advantage of the word 'Adya' in Yajnavalkya's Text, Vijnaneswara stated as follows:—"And as indicated by the word 'Adya'—any other—also property which she may have acquired by inheritance, purchase, partition, seizure or finding are denominated by Manu and the rest 'stridhana'. The term 'stridhana' conforms in its important with its etimology, and is not technical; for, if the literal sense is admissible a technical acceptation is improper". Thus it is seen that, according to Vijnaneswara, even property inherited by a female, either from a male or female, is her stridhana. Somehow, Their Lordships of the Privy Council, by taking into consideration some texts of the Dayabhaga school of law, held that property inherited by a female was not stridhana. The view taken by Their Lordships has been the subject of strong criticism by eminent Judges, Scholars and Text-writers on Hindu Law. In this connection, it may be useful to refer here to the views of Sri M. Venkatasubba Rao, Retired Judge of the Madras High Court:—"There has been a retrograde tendency in certain matters and with one of them that stands out I shall deal. The rule of limited estate the greatest single obstacle to emancipation of Hindu women has been needlessly engrafted on Hindu Law. This is a gift by the Privy Council to the forces of conservatism and has caused incalculable harm to Hindu society." The learned Judge goes on to say: "The doctrine of limited estate is applied to inherited property, the rule being one of reverter, that the property on the death of the taker returns to the original owner, whether male or female, to whose heirs it again descends. By parity of reasoning, what applies to inherited property must equally apply to property acquired by purchase, partition, seizure of finding, for according to Vijnaneswara all these five modes are included in the word 'Adya', inheritance, being on a par with the other four indicated modes. Is it ever suggested that the property acquired by, say, seizure of finding is subject to that

rule? Indeed it is, in the very nature of things, incapable of application, for who can be deemed reversionary heirs to such property? In the realm of Hindu Law, this rule more than any other has produced grave social injustice. Kinsmen of all sorts swoop down, goodness knows from where, to clutch at the property and this not only on the death of the woman, as reversioners are permitted by law to harass her even during her lifetime. There is no class of suits which shock a judge's sense of justice more than suits by reversioners. To mitigate the evil, rules of evidence have been relaxed to protect transfers by Hindu women and the doctrine of necessity has been greatly stretched. Nevertheless how many titles (some even of sixty or seventy years' standing) have had to be upset and how many homes have been wrecked! To what unending litigation, chicanery and subterfuge does this rule not lead!" In the draft Hindu Code also, 'Stridhana' has been defined to mean "property of a woman howsoever acquired, whether by inheritance or device or at a partition, in lieu of maintenance or arrears of maintenance, by gift from a relative or stranger before, at or, after her marriage, by her own skill or exertions, by purchase, by prescription or by any other mode". The view of man with progressive ideas is to adopt the same definition even in Mysore. Though the Chandrasekhara Ayyar Committee, did not go to that full length, they nevertheless recommended that the property taken by inheritance by a female from another female, or from her husband or son, or from a male relative connected by blood should be stridhana. Even that recommendation was not accepted when the Act was actually enacted. In this connection, it will be useful to refer to the following observations of the Committee:—"The above no doubt falls short of what many earnest advocates of women's rights would like to see enacted by the Legislature. But at any rate it will be a decided step forward in the desired direction; and what is of immediate practical consequence, it is likely to commend itself much more readily to the generality of people even of progressive views than might be the complete assimilation of the position of both classes of female heirs. We must urge at the same time that what is now recommended as a middle course is a most essential step and that without it any other reform must be no better than a patchwork measure or a series of disconnected amelioration aimed at minor disabilities here and there which cannot go far towards improving the legal and social status and condition of Hindu women." In the circumstances and in view of the very few classes of limited estates now possible under the Act, question 13 has been suggested.

There are two lines of succession to stridhana envisaged by section 12, one as regards stridhana property comprised in clauses (*a*) and (*b*) of sub-section 2 of section 10, and the other in respect of other stridhana property. It appears to be simpler to have only one order of succession, the principle of simultaneous succession being applied in the case of children, male and female, and grandchildren, male and female, the male taking half the share of the female. Questions 14 and 15 are therefore included.

PART V—Maintenance.

As the law stands at present, a father-in-law is only morally and not legally bound to maintain his widowed daughter-in-law, unless there is joint family property in which she has a right to maintenance.

The view of some seems to be that the father-in-law, provided he is possessed of sufficient means, should be legally bound to maintain his widowed daughter-in-law. Hence question 16.

In British India, the trend of opinion has been in favour of amending the law so that lunacy or idiocy would be a good ground for obtaining a decree of nullity of marriage (*See* Draft Hindu Code). Though in our State we do not intend proposing at present any provision for obtaining a decree of nullity of marriage, it appears to be a ground which should entitle a wife to refuse to live with her husband and claim separate maintenance. Hence the need for question 17.

In section 23 of the Act, one of the grounds on which a wife is entitled to refuse to live with her husband is when he renounces the *Hindu Religion.* The Act, on the other hand, applies not only to Hindus but to all persons who, but for the passing of the Act, would have been subject to the Law of Mitakshara in respect of the provisions enacted therein. It has been in fact applied to Jains. Question 18 has therefore been suggested.

In the Draft Hindu Code, we find clause (*f*) in section 26—"for any other justifiable cause" as an additional ground entitling a wife to live separately from her husband and claim maintenance. Such a general clause may be useful as there may be cases which may not strictly fall within any of clauses (*a*) to (*e*) of section 23 but still would constitute, in the opinion of the Court, a justifiable cause. Hence question 19.

PART VII—General.

With the proposal to grant rights of simultaneous succession and a right to certain share at partition and to demand partition, it may be necessary to make the provisions of the Partition Act (Act III of 1913) applicable to such cases. Question 20 has been therefore put in.

Under the Hindu Law, a *Dasi Putra* has rights of inheritance in certain circumstances. The Act takes no note of it in disposing of the property of a deceased. It may be necessary to safegurd his existing rights, if no change is called for in this respect. Otherwise, it may have to be specifically stated that the word 'son' does not include an "illegitimate son", as has been done in the Draft Hindu Code. Questions 21 and 22 are suggested,

The Act does not clearly indicate, except in a few specified instances, that an adopted son has for all purposes (except in the case of an afterborn son) the same rights as an *aurasa* son. So question 23 has been included.

According to Hindu Law, where a son is born after adoption, the afterborn son usually gets a larger share of the father's property, the relative shares of the two sons being different in the different schools of law. One view is that, inasmuch as the adopted son loses all his future rights in the family of his birth as a consequence of his adoption, it seems hardly fair that he should ever count as anything less than a natural born son in the family of his adoption. Hence question 24.

APPENDIX III.

1 Sir S. Varadachariar, Judge, Federal Court.
2 Sri T. R. Venkataramasastry, Advocate, Madras.
3 Bar Association, Mysore.
4 Law Association, Bangalore.
5 Sri L. Venkataramanayya, B.A., B.L., District and Sessions Judge, Mysore.
6 Sri C. Lakshmana Gowda, B.A., B.L., Advocate-General, Bangalore.
7 Sri M. C. Nanjaraj Urs, B.A., LL.B., Special Second Magistrate, Shimoga.
8 Sri S. V. Ranga Rao Kadam, B.A., B.L., Special First Class Magistrate.
9 Sri C. V. Channappa, B.A., B.L., Munsiff, Mandya.
10 Sri B. Thimmapparaj Urs, M.A., LL.B., Munsiff, Sagar.
11 Sri R. Sanjivalu, B.Sc., LL.B., Special First Magistrate, Shimoga.
12 Sri D. R. Narasinga Rao, B.Sc., LL.B., Munsiff-Magistrate, Hunsur.
13 Sri V. Narasimhamurthy, M.A., LL.B., Munsiff, Hassan.
14 Sri S. V. Govinda Sarma, B.A., LL.B., Munsiff, Shimoga.
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20 Sri C. R. Narayanaswamiengar, Advocate, Hassan.
21 Sri B. N. Raghavaiya, Advocate, Shimoga.
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23 Sri Sidlaghatta Puttashamanna, B.A., LL.B., Advocate, Bangalore City.
24 Sri A. Subramanyam, B.A., LL.B., Advocate, Madhugiri.
25 Sri N. Gopalakrishna Iyengar, Advocate, Malleswaram, Bangalore City.
26 Sri Kotra Basavappa, B.A., LL.B., Pleader, Sagar.
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31 Sri G. R. Srinivasa Rao, B.A., B.L., Advocate, Kolar.

32 Sri K. Krishna Das, Advocate. Mysore.

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43 Sri K. Ranga Iyengar, Advocate, Bangalore.

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45 Sri G. Chennappa, B.A., LL.B., Advocate and Public Prosecutor, Shimoga.

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47 Bhagini Seva Samaja, Mysore.

48 Mahila Seva Samaja, Chitaldrug.

49 Mahila Seva Samaja, Bowringpet.

50 Mahila Seva Samaja, Sagar.

51 Mahila Samaja, Chintamani.

52 Sri S. Raghavachar, Auditor, Jog Power Scheme, Hirebhasgar.

53 Sri K. Gundu Rao, Retired Civil Judge, Secunderabad.

54 *Rajasevasakta* Sri M. Rama Rao.

55 *Rajasevas ikta* Professor A R. Wadia.

56 *Rajasevasakta* Sri M. G. Rangaiya, Retired Chief Engineer.

57 Sri G. M. Maruliah, B.A., LL.B., Sheristedar, District Court, Shimoga.

58 Janab *Moin-ul-Vizarath* A. K. Syed Taj Peeran, B.A., President, Asakta Poshaka Sabha, Visveswarapuram, Bangalore City.

59 Janab *Rukn-ul-Mulk* S. Abdul Wajid, B.A., Retired Revenue Commissioner, Bangalore.

60 Sri D. H. Chandrasekharaiya, B.A., LL.B., Ex-President, Legislative Council.

61 Sri Siddagiri Brahman Matha, Chakrabhavi, Bangalore District.

62 Sri Jangama Matha, Mugalur Mayasandra, Turuvekere Taluk, Tumkur District.

63 Sri Jangama Matha, Thuppada Madu, Nagamangala Taluk, Mandya District.

64 Sri Matha, Sri Arsikere, Yalaradu Samsthana, Chiknayakanahalli Taluk.

65 Sri Jangama Matha, Hebbal Grama, Belur Taluk, Hassan District.

66 Sri Jangama Sannakki Matha, Devalapura, Tumkur District.

67 Sri Jangama Virakti Matha, Shiralakoppa, Shimoga District.

68 Sri Matha, Hariharapura, Koppa Taluk, Kadur District.

69 Sri Rajapura Samsthana Mutt, Anekal Taluk, Bangalore District.

70 Sri Makkaladevara Mutt, Magadi Taluk, Bangalore District

71 Srinatrambhapari Mutt, Godagere Grama, Chiknaikanahalli Taluk.

72 Sri Kanchikere Jangama Mutt, Honnali Taluk, Shimoga District.

73 Veerannadevaru, descendant of the Swami of Madihalli Mutt, Turuvekere Taluk.

74 *Dharmadhikari Mahavidwan Pouranika Ratna* Holavanahalli Seshacharya, Mysore.

75 Sri K. C. Puttegowda, M. R. A., Belur Taluk.

76 Srimathi B. L. Subhamma, Vice-President, District Board Kadur.

77 Sri N. Linganna, M. R. A., Hiriyur Taluk:

78 *Sahityaratnam Vaidikaratnam* K. Gopalakrishna Sastri, Mysore.

79 Sri Kuppaluru Bangarappa, M. R. A , Shiralakoppa.

80 Srimathi Annapurnamma, M. R. A., Bangalore City.

81 Srimathi Nanjamma, Jangama Mutt, Bellur.

82 Sri K. Rangappa, Guliganahalli.

83 S. Narayana Rao, Retired Head Master, Avani, Mulbaga Taluk.

84 Muchi Gaviappa, Merchant, Budigere.

85 Sri Doddananjiah, M. R. A., Nanjangud.

86 Sri A Gangarudriah, Aravindehalli Mutt.

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